

Understanding the Civil Involuntary Commitment Process

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About the Author

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Attorneys and mental health professionals in Oklahoma often refer to the civil commitment of a mentally ill person as an “EOD.” However, as this article will explain, there is no such thing as EOD. Oklahoma’s process for civil commitment of mentally ill persons requiring treatment is set forth in the Mental Health Law located in 43A O.S. §1-101 *et seq.* There are typically three stages to the civil commitment process. The first stage is protective custody.¹ The second stage is emergency detention.² The final stage is the involuntary commitment hearing.³ This article will outline each of those stages as they relate to the involuntary commitment of adults.

Prior to reviewing the stages of the involuntary commitment process, it is important to realize the reason for the involuntary commitment of mentally ill persons is only to protect that person or others from harm that may come from not confining the mentally ill person requiring treatment. Not all persons with a mental illness are subject to involuntary civil commitment. If a mentally ill person is not a “person requiring treatment” as defined by Oklahoma Statutes, that person cannot be committed involuntarily.⁴ A “person requiring treatment” is a person who poses a risk of harm (danger) to self or others as a result of a mental illness or drug or alcohol dependency.⁵ A “mental illness” is “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.”⁶ Risk of harm to self or others is also defined by statute.⁷

PROTECTIVE CUSTODY

Protective custody occurs when a law enforcement officer detains a person the officer reasonably believes is a person requiring treatment and requests that a licensed mental health professional

("LMHP") conduct an emergency examination.⁸ This typically occurs when a family member or other person calls law enforcement and advises them that a person they believe to be mentally ill is threatening suicide or threatening to harm someone else. The police officer will then ask some questions to determine if he or she believes the person should be taken into custody. If the police officer reasonably believes the person should be taken into protective custody, he must either obtain a third party statement from the person or persons who observed the dangerous behavior of the individual or fill out a peace officer's affidavit setting forth what he personally observed.⁹

Once a person is taken into protective custody, he must be transported by law enforcement to a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for an emergency examination.¹⁰ A list of designated facilities can be found in the Manual for Emergency Detention and Civil Commitment in Oklahoma published by the Oklahoma Department of Mental Health and Substance Abuse Services. Once at the designated facility, an LMHP must conduct an emergency examination.¹¹ This emergency examination must take place within 12 hours of the time law enforcement first took the person into protective custody.¹² If the examination is not conducted within the 12-hour period, the person must be released and returned by law enforcement to the place where he was taken into protective custody, to his residence or to another location.¹³

The initial examination by the LMHP is to determine if the person brought to the facility by law enforcement appears to the mental health professional to be a person requiring treatment such that emergency detention is warranted.¹⁴ If after the initial examination the mental health professional does not believe the person is a danger to self or others as the result of a mental illness, the person must be released and returned by law enforcement to the place where he was taken into protective custody, to his residence or to another location.¹⁵

However, if after the emergency examination, the LMHP believes the person is a danger to self or others as the result of a mental illness, the person must be placed in emergency detention.¹⁶ If the facility at which the emergency examination was conducted is not a facility designated by the Commissioner of Mental Health and Substance Abuse Services, law enforcement must transport the person to such a facility.¹⁷ At this point, there is still no court order in place or required.

EMERGENCY DETENTION

The person who was originally taken into protective custody by law enforcement is no longer in protective custody at this point. The person is now in emergency detention. Or, as the folks in the mental health profession say, the person was ED'd. Again, because there still has not been a court order, this is not an EOD. There is no such thing as an emergency order of detention. There has still been no court involvement in the process at this point. At this point, the person who is now in emergency detention has the right to contact a relative, a friend or an attorney.¹⁸ However, the facility at which the person is being held cannot call anyone and notify them the person is in emergency detention unless the person signs a consent for release of information allowing such a disclosure.¹⁹

A person can be held in emergency detention (ED) status for up to 72 hours, exclusive of weekends and holidays, without a court order.²⁰ During that 72-hour period, two LMHPs must conduct a full

examination and evaluation to determine if the person is a person requiring treatment, i.e. a danger to self or others because of a mental illness.²¹ One of these LMHPs must be a psychiatrist, a psychologist or a physician with specific mental health training.²²

If after the full examination and evaluation the two LMHPs determine the person does not need treatment beyond the 72-hour emergency detention period, the person is to be released.²³ The person is to be returned by law enforcement to the place where he was taken into protective custody, to his home or to an alternate facility.²⁴ If the person resides in a group home or nursing home, that facility cannot refuse the return of the individual.²⁵

If after the full examination the two LMHPs determine the person does need treatment beyond the 72-hour period, court involvement is required.²⁶ At this point, a petition for involuntary commitment should be filed unless the person agrees to voluntary commitment.²⁷ Accompanying the petition for involuntary commitment must be a certificate of evaluation signed by both LMHPs.²⁸ If only one of the LMHPs believes that additional treatment beyond the 72-hour period is required, that LMHP may file a petition for involuntary commitment.²⁹ However, there will be no certificate of evaluation attached. At that point the court must decide whether to order another evaluation or proceed to hearing without the certificate of evaluation.

INVOLUNTARY CIVIL COMMITMENT

The petition for involuntary commitment will generally be filed by the director, or designee, of the facility in which the person was held in emergency detention.³⁰ The director or designee may also request the district attorney file the petition.³¹ In addition to the district attorney or emergency facility director, the petition can be filed by a LMHP, certain relatives, administrators of hospitals licensed by the Joint Commission on Accreditation of Healthcare Organizations, the head of a correctional facility or a peace officer where the person lives or was taken into protective custody.³² The petition for involuntary commitment must be sworn to under oath by the person filing it.³³ If the petition is filed prior to a full examination and evaluation being conducted by two LMHPs, the court will order such an examination to take place before hearing the petition.³⁴ This evaluation will be conducted on an outpatient basis unless otherwise ordered by the court.³⁵

The petition can be filed in the county where the person resides, the county where the person was taken into protective custody or the county where the person is being held in emergency detention.³⁶ The person who is the subject of the petition for involuntary commitment is entitled to legal representation.³⁷ If the person does not have a private attorney, a public defender or court-appointed attorney must represent him.³⁸ The attorney appointed to represent the person who is the subject of the involuntary commitment petition must meet with him within one day of notification and must provide the person with a statement of his rights.³⁹

Once the petition for involuntary commitment is filed, the court must conduct a hearing to determine if involuntary treatment is required.⁴⁰ The hearing must be conducted within the 72-hour emergency detention period or the person must be discharged unless a pre-hearing detention order is entered prior to the end of the 72-hour period.⁴¹ The reason for a court order at this point is that any further detention beyond the 72-hour period without such an order is considered a violation of the person's constitutional rights. However, before the court orders pre-hearing detention, it must determine if

there is probable cause to detain the person until a hearing on the issue of involuntary commitment can be conducted.⁴² To make this determination, the court should review the certificate of evaluation completed by the two LMHPs. If the court does not believe there is probable cause to issue a pre-hearing detention order, the request for such an order should be denied and the person returned to the place where he was taken into protective custody.⁴³

The petition must contain a statement of the facts that the petitioner alleges are the basis for involuntary commitment.⁴⁴ It must show that the person is a danger to self or others as a result of mental illness. The petition, along with notice of the date, time and place of the hearing for involuntary commitment, must be served on the person who is the subject of the petition at least one day prior to the hearing.⁴⁵ In addition, the person who is the subject of the petition must receive a copy of the LMHPs' certificate of evaluation, the third party statement or peace officer's affidavit and the pre-hearing detention order.⁴⁶ The person delivering these documents must explain them to the person who is the subject of the petition and must advise him of his habeas corpus rights.⁴⁷ The person's attorney and the facility in which the person is being held in emergency detention must also receive copies of these items.⁴⁸

The notice of hearing must include the definitions of "mental illness" and "person requiring treatment" as set forth in 43A O.S. § 1-103.⁴⁹ Additionally, the notice must contain the following: a statement that the person has a right to request a jury trial, a statement that the petitioner may present witnesses at the hearing and the person who is the subject of the petition has a right to cross-examine those witnesses, notification that counsel has been appointed by the court and will be paid for if the person is indigent, that if the person is found to be a person requiring treatment the court will hear further evidence as to the competency of the person to refuse medication.⁵⁰ Additionally, if an examination was not conducted prior to the filing of the petition and the court has ordered such an evaluation, the notice must advise the person of such order of evaluation.⁵¹

The hearing on the petition should be closed to the public and may be conducted at the facility in which the person is being detained.⁵² Of course, the person who is the subject of the petition has the right to be present and to call witnesses.⁵³ The person may also be called as a witness himself.⁵⁴ However, nothing the person says at the hearing can be used for any purpose except the proceeding to determine if involuntary commitment is appropriate.⁵⁵ Indeed, the statute is incredibly clear that:

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.⁵⁶

If a district attorney represents a state-operated mental health facility in an involuntary commitment proceeding against an individual and later prosecutes that same individual, the district attorney must use extreme caution not to bring in any information learned from the individual at the mental health hearing. If the attorney does not follow this rule, he is not only ignoring the law, he is violating the individual's rights.

If the hearing is in front of the judge, the LMHPs do not have to be present. Rather, the judge can act upon the affidavits of the LMHPs who evaluated the person and prepared the certificate of evaluation.⁵⁷ However, if a jury trial is demanded, those persons must be present at the hearing as

they are subject to cross-examination by the attorney for the person who is the subject of the petition for involuntary commitment.⁵⁸

Once the hearing is concluded, the judge is required to “determine by clear and convincing evidence whether the person has a mental illness and whether the person is a person requiring treatment.”⁵⁹ Once he has reached a decision, the judge must enter an order outlining his ruling in the case.⁶⁰ If the judge determines the person is not a person requiring treatment, the judge shall dismiss the petition and order the person discharged from detention.⁶¹

If the judge determines the person is a person requiring treatment, the judge must determine if inpatient treatment is the least restrictive alternative.⁶² Indeed, the judge may not order inpatient treatment without “a thorough consideration of available treatment alternatives.”⁶³ If the judge finds that treatment other than inpatient treatment is appropriate, the judge may order the patient to receive whatever treatment, such as outpatient treatment on a regular basis, as the court finds appropriate.⁶⁴ During the time the person is receiving alternative treatment, the court retains jurisdiction over the individual.⁶⁵ If the judge finds that there is no less restrictive treatment which is appropriate, the judge must order the person committed to the custody of the Department of Mental Health and Substance Abuse Services or a private facility that is willing to accept the person for treatment.⁶⁶

Once the court has determined that inpatient treatment is necessary, the court must then make a finding as to the person’s competency to consent to or refuse the treatment ordered, including the person’s ability to refuse medication.⁶⁷ If the judge determines that the person is not competent to refuse medication, the order should reflect such a finding.

Once the person has been involuntarily committed, treatment must begin. The goal of involuntary commitment is not to lock up a person but to ensure he gets treatment. Thus, once treatment is successful and the person is no longer a danger to self or others as a result of a mental illness, the person must be discharged. Within 48 hours after discharge, the court is to be notified of such discharge so that it can close its file. Prior law required notification prior to discharge. However, because a person cannot be lawfully confined if he is not a person requiring treatment, it made no sense to notify the court in advance of the release as the court cannot order further detention without violating the person’s constitutional right to liberty.

CONCLUSION

This is a very brief overview of the civil commitment process for adults in Oklahoma. As indicated previously, the Oklahoma Department of Mental Health and Substance Abuse Services publishes a Manual for Emergency Detention and Civil Commitment in Oklahoma. A copy of that manual can be obtained free of charge from the department or can be downloaded from its Web site at www.odmhsas.org. It is recommended that any attorney involved with any stage of the civil commitment process obtain a copy of that manual, which goes into much more detail than this article.

Citations:

1. 43A O.S. § 5-207.
2. 43A O.S. § 5-208.
3. 43A O.S. §5-410 et seq.
4. 43A O.S. § 5-208, 5-415.
5. 43A O.S. § 1-103 (13).
6. 43A O.S. § 1-103 (3).
7. 43A O.S. § 1-103 (18).
8. 43A O.S. § 5-207.
9. 43A O.S. § 5-207.
- 10.. 43A O.S. § 5-707(D)
11. *Id.* and 43A O.S. § 5-208.
12. 43A O.S. § 5-208(A)(1).
13. 43A O.S. § 5-208.
14. *Id.*
15. 43A O.S. § 5-208(A)(2).
16. 43A O.S. § 5-208(A)(3).
17. 43A O.S. § 5-207(D).
18. 43A O.S. § 5-201.
19. 43A O.S. § 1-109.
20. 43A O.S. § 5-208(A)(3).
21. 43A O.S. § 5-208(A)(4).
22. 43A O.S. § 5-414.
23. 43A O.S. § 5-208(C).
24. *Id.*
25. 43A O.S. § 5-208(A)(2).
26. 43A O.S. § 5-208(D).
27. 43A O.S. § 5-208(C).
28. 43A O.S. § 5-410(B)(3).
29. 43A O.S. § 5-410(A)(2).
30. 43A O.S. § 5-208(D).
31. *Id.*
32. 43A O.S. § 5-410.
33. 43A O.S. § 410(B)(1).
34. 43A O.S. § 5-414(A).
35. 43A O.S. § 5-414(A)(1).
36. 43A O.S. § 1-107.
37. 43A O.S. § 5-411(A)(2).
38. *Id.*
39. 43A O.S. § 5-411(D)(1).
40. 43A O.S. § 5-415(A).
41. 43A O.S. § 5-413(A).
42. 43A O.S. § 5-413(C)(2).
43. 43A O.S. § 5-413(B).
44. 43A O.S. § 5-410.
45. 43A O.S. § 5-412(A).
46. *Id.*
47. 43A O.S. § 5-412 (C).
48. 43A O.S. § 5-412(D).
49. 43A O.S. § 5-412(B).
50. *Id.*
51. *Id.*
52. 43A O.S. § 5-411(A)(3).
53. 43A O.S. § 5-411 (A)(5) & (6).
54. 43A O.S. § 5-415(B)(3).
55. 43A O.S. § 5-411(C).
56. *Id.*
57. 43A O.S. § 5-415(C)(2).
58. 43A O.S. § 5-415(C)(3).
59. 43A I.S. §5-415(C).
60. 43A O.S. § 5-415.
61. 43A O.S. § 5-415(D).
62. 43A O.S. § 5-415(E).
63. 43A O.S. § 5-415(E)(1).
64. 43A O.S. § 5-415(E)(2).
65. *Id.* and 43A O.S. § 5-416(B).
66. 43A O.S. § 5-415(E)(3).
67. 43A O.S. § 5-416(A).