

Clinical Considerations for Involuntary Mental Health Treatment of Adults in Oklahoma

Brandon Schader, M.D.
Medical Director for Crisis Stabilization
Oklahoma County Crisis Intervention Center
Oklahoma City, OK

Introduction

- ❖ Intent of Oklahoma Mental Health Law is to provide for the humane treatment of persons at risk due to the presence of a mental illness and/or substance abuse disorder.
- ❖ At times, persons may require confinement and administration of treatment on an involuntary basis, and Title 43A contains specific provisions/procedures to address this need.
- ❖ A “person requiring treatment” is an individual who poses **imminent** risk of harm to self and/or others as a result of a mental illness or substance use disorder and is defined in Title 43A as a “finding of dangerousness”.
 - Persons who have made attempts at suicide or self-harm or persons who are threatening/gesturing to do so.
 - Persons who have made threats of harm or have engaged in harmful behaviors toward others.
 - Persons who pose a risk to their own well-being as a result of neglect of basic needs.
 - Persisting lack of attention to nutrition leading to compromised health.
 - Persisting lack of basic self-care such that health is compromised (or can be reasonably expected to lead to compromise).
 - Persisting lack of attention to maintaining living quarters such that safety/health is at risk.
 - A finding of “dangerousness” is ALWAYS a prerequisite to involuntary treatment (presence of diagnosable mental illness alone, even with significant symptoms, is insufficient).
 - Civil Commitment excludes individuals confined in a jail/correctional facility with pending criminal charges (persons not confined or out on bail ARE subject to civil commitment).
 - Certain individuals may meet criteria for “dangerousness” but are specifically excluded from Title 43A because the “dangerousness” IS NOT a result of a mental illness or substance use disorder (and therefore does not meet criteria for “a person requiring treatment”).

- Individuals whose “mental processes are weakened by advanced years”.
- Persons with mental retardation or developmental disorders.
- Persons with epilepsy or seizure disorders.
- Persons who have traumatic brain injuries.

Process for Involuntary Commitment

1) Protective Custody

- a) Peace officer directly observes an individual who likely represents a “person requiring treatment” **or** responds to a call for “help” from family/friends/others and finds the individual in question to be a “person requiring treatment”, will take the person into **protective custody**.
 - i) Peace officer completes an affidavit detailing the behaviors believed to constitute “dangerousness” and/or obtains a third-party affidavit detailing the same.
 - ii) Peace officer provides transport to a designated emergency examination facility
- b) Protective custody is not a prerequisite for involuntary commitment: family members/others can transport the individual in question to an examination facility themselves.

2) Emergency Examination

- a) Conducted by a “licensed mental health professional” (LMHP). All of the following are designated by 43A as “LMHPs”:
 - i) A psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology
 - ii) Any licensed physician who has undergone specific training regarding mental health diagnosis and treatment
 - iii) Licensed clinical psychologists
 - iv) Licensed professional counselors
 - v) Licensed clinical social workers
 - vi) Licensed marital and family therapists
 - vii) A licensed behavioral practitioner
 - viii) A licensed advanced-practice nurse specializing in mental health
 - ix) A physician assistant who has undergone specific training regarding mental health diagnosis and treatment
- b) Emergency examination must occur within 12 hours of an officer taking an individual into protective custody.
- c) Emergency examination may also be requested by family members (18 years or older), a legal guardian, or the individual him or herself.
- d) If the LMHP determines that the person is a “person requiring treatment”, then a **LMHP Statement** form is completed. The LMHP Statement describes the findings of

the examination and details why the person is believed to constitute an imminent risk, and begins the **Emergency Detention** process.

- e) If the LMHP determines that the person is NOT a “person requiring treatment”, then the individual is discharged from protective custody
 - i) Peace officer provides transportation to point of origin or home or
 - ii) Individual can make other transportation arrangements

3) **Emergency Detention**

- a) Provides for the involuntary confinement of a person who appears to be a “person requiring treatment” for a period of up to 72 hours (exclusive of weekends and designated state holidays)
 - i) Intended to ensure an individual receives appropriate intervention while protecting him/her as well as others from dangers arising as a direct consequence of the mental illness or substance-use problem.
 - ii) Begins when LMHP completes LMHP statement
 - iii) Should be initiated only when it is the least restrictive alternative to treatment
- b) Upon entry into emergency detention status, the individual has the right to contact a relative, friend, or attorney. The individual also has the right to designate a “treatment advocate”, who can then participate in the individual’s treatment and discharge planning.
- c) Examination and evaluation
 - i) **Two** LMHPs must evaluate the individual within the 72 hour emergency detention period
 - (1) If both LMHPs determine that the individual does not require continued inpatient treatment beyond the emergency detention period, then the person is discharged and returned to the point or origin, home, or an alternative placement.
 - (2) If both LMHPs determine that the individual poses continuing risk of imminent dangerousness at the end of the emergency detention period, then a **Petition for Involuntary Commitment**, a **Certificate of Evaluation**, and a **Report of Evaluation** is filed in district court.
 - (a) The petition for involuntary commitment is a document which contains a brief summary of the nature of the imminent risk and initiates formal court proceedings that permit due process to an individual alleged to be a “person requiring treatment.”
 - (b) The certificate of evaluation details the clinical findings leading the two LMHPs to believe that continued involuntary hospitalization is indicated.
 - (c) The report of evaluation is signed by both LMHPs and asserts that 1) the individual is a “person requiring treatment”, 2) the person is reasonably likely to benefit from mental health treatment, and 3) that inpatient treatment is the least restrictive alternative

- (d) If the court date falls outside of the 72 hour emergency detention period, the individual must be discharged unless an order directing prehearing detention order is obtained from the court.
- (e) If only one of the LMHPs believes the person requires additional treatment, that LMHP can file the petition without a certificate of evaluation. The court then has the option to order another evaluation or proceed with a hearing in the absence of a certificate of evaluation.
- ii) During the emergency detention period, patients have the right to refuse any treatment (including medications). The only exceptions are circumstances when the individual poses imminent risk to self/others (such as severe agitation); in this situation, the person must be evaluated face-to-face by a physician, who can then order medication for a non-consenting individual **only if necessary to protect the patient or others from serious bodily harm.**
- iii) Seclusion and restraint **are not** therapeutic in any way and are used only as a last-resort effort to protect self or others from serious bodily harm.

4) Involuntary Commitment

- a) Process is initiated when a petition for involuntary commitment, certificate of evaluation, report of evaluation, and request for prehearing detention (if necessary) are submitted to the court, and a hearing date is set.
- b) The individual in question must be notified regarding time, date, and place of hearing at least one day in advance.
 - i) The person is served with the notice of hearing, a copy of the petition, a copy of the certificate of evaluation, prehearing detention order, and order of evaluation (if applicable).
 - ii) The individual is assigned an attorney at the time filing occurs, but has the right to retain counsel of his/her choice.
- c) Hearing
 - i) LMHP provides testimony asserting persisting dangerousness and need for continued involuntary hospitalization, and is subject to cross-examination.
 - ii) Evidence regarding competence to refuse medication is presented (if applicable).
 - iii) Court issues a ruling based upon the judge's decision ordering the **least restrictive treatment** and is based upon clear and convincing evidence.

(1) Inpatient hospitalization is considered a last resort when less restrictive means are inappropriate to meet the individual's needs

 - (a) Law-enforcement provides transportation to the inpatient facility
 - (b) The court must also consider competence to refuse treatment (including medications), and in addition to an order for inpatient hospitalization, can issue an order for the administration of treatment involuntarily. Even

patients court-committed retain the right to consent to or refuse treatment, **unless** ruled otherwise by the court.

- (c) Discharge planning is the responsibility to the treatment team serving the patient during the hospitalization
 - (i) State-operated facilities must review the involuntary status of committed persons at least once every 90 days. Discharge planning **must** be initiated when the patient is no longer a danger to self/others and is capable of surviving safely in freedom with or without assistance from other individuals, agencies, or other sources of support.
 1. If the facility determines that the patient can appropriately be discharged, staff has the option to request a review hearing for an order for alternative treatment, **or** can simply make arrangements for voluntary outpatient follow-up without a court order (if appropriate)
 2. Committed individuals retain the right to request review hearings
- (2) If the court finds that placement less restrictive than inpatient hospitalization is appropriate, it has the flexibility to order any appropriate alternative treatment.
 - (a) Typically involves regularly-scheduled, supervised outpatient services for some specific length of time
 - (b) Court retains jurisdiction during the supervision period and has the option to modify the order as appropriate (based upon periodic review of patient progress).
 - (c) If there is a lack of adherence to the treatment plan as ordered by the court, the court must set a show cause hearing to consider any modifications to the order (such as hospitalization).