Around here, we don’t look backwards for very long . . .

We keep moving forward, opening up new doors and doing new things because we’re curious . . .

And curiosity keeps leading us down new paths.

–Walt Disney
Objectives

- Provide a Summary of Emergency Detention (ED) & Involuntary Commitment Process
- Develop Better Understanding of Statutory & Constitutional Requirements for Civil Confinement
Prevalence of Mental Illness

- How many adults in America experience mental illness?
  - 1 in 5

- How many adults in America live with a serious mental illness?
  - 1 in 25
  
  Serious mental illness is a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.
Mental Illness on Campus

- What percentage of college students were diagnosed or treated by a professional for a mental health condition within 2016?
  - 25%
At what age does schizophrenia begin to manifest?
- Early to late 20s

- What percentage of young adults who are no longer in college stated they are not attending college because of a mental health related reason?
  - 64%
What percentage of students with a diagnosable mental health condition did not seek help?

- 40%

Why?

- Concern of stigma is the number one reason students do not seek help.
https://www.youtube.com/watch?v=-6Vxb6mPoFU
Purpose of Mental Health Law

- Ensure adequate treatment for mental illness & substance abuse
- Provide orderly & reliable procedures for commitment consistent with due process requirements
Questions to Consider

- Why is a person placed in ED?
- When may the state lawfully confine someone against their will?
- Is mental illness a crime?
- What rights are affected by placing someone in ED?
- What safeguards should be considered prior to an ED?
Confidentiality

- FERPA, HIPAA, and 42 CFR Part 2 allow disclosures in certain exceptions.
- FERPA allows the disclosure to appropriate officials in connection with a health or safety emergency.
  - 34 CFR §99.31
What is Mental Illness?

- Statutory definition:
  A SUBSTANTIAL disorder of thought, mood, perception, etc. that SIGNIFICANTLY impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.

  43A O.S. §1-103(3)

- Not everything in DSM qualifies
“PERSON REQUIRING TREATMENT”

- Criteria - must be a “person requiring treatment”
  1. A person who due to a mental illness or substance dependency dangerous to self or others; or
  2. A person who is drug or alcohol dependent and as a result of dependency is a risk of harm to self or other.

- Causal link - Dangerousness must be caused by mental illness or substance dependency
a. “Person requiring treatment” means a person who because of his or her mental illness or drug or alcohol dependency:
   ◦ (1) poses 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.
43A O.S. §1-103(13) (continued)

(2) poses 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,

(3) has 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.
(4) in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or

(5) poses a substantial risk of immediate serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.
43A O.S. §1-103(13)
Exclusions to a “Person Requiring Treatment”

- Equally as important as what is included as a “person requiring treatment” is what is excluded under the law.
43A O.S. §1-103(13)  
Exclusions to a “Person Requiring Treatment”

- 43A O.S. §1–103(13)(c) specifically excludes:
  - (1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer’s disease,
  - (2) a mentally retarded or developmentally disabled person as defined in Title 10 of the Oklahoma Statutes,
43A O.S. §1–103(13)
Exclusions to a “Person Requiring Treatment”

- (3) a person with a seizure disorder,
- (4) a person with a traumatic brain injury, or
- (5) a person who is homeless.
Major Categories

- Schizophrenia
- Bipolar Disorder
- Major Depression
- Anxiety Disorders
Stage One
Protective Custody

- Officer may place person into protective custody when there is reasonable belief individual is “person requiring treatment” 43A OS §5-207(A) and (B)
- Prepares a Peace Officer affidavit or obtains 3rd Party statement 43A OS §5-207(C) 🐦
- Transports the person to a facility for an initial assessment 43A OS §5-207(D)
LEVEL OF SUSPICION FOR PROTECTIVE CUSTODY

- The level of suspicion an officer must have to take an individual into protective custody under the Emergency Detention Statutes is a “REASONABLE BELIEF” that a person is “a person requiring treatment”
- The mental health statutes do not define “reasonable belief”
- Equates to Probable Cause
**Stage Two**

**What is Emergency Detention?**

- Detention of a person who appears to be “a person requiring treatment”
- Begins when the LMHP determines the person is a person requiring treatment.
- Confine up to 120 hours, excluding weekends and holidays (unless further ordered by the court) 43A OS §5-208(A)(3)
Initial Assessment

- Purpose: to determine if emergency detention necessary (is person “a person requiring treatment”)
- Who may request?
  - Individual
  - Family or guardian
  - Law enforcement
Initial Assessment

- Must occur within 12 hours of protective custody. 43A OS §5-208(A)(1)
- Performed by LMHP (licensed mental health professional)
- If determined person does not meet criteria, officer immediately returns individual to point taken into custody or residence.
Licensed Mental Health Professional (LMHP)

- Psychiatrist
- Physician (M.D. or D.O.)
- Psychologist
- Licensed Professional Counselor
- Licensed Clinical Social Worker
- Licensed Marital & Family Therapist
- Licensed Behavioral Practitioner
- Advanced Practice Nurse
- Physicians Assistant
- Licensed Drug and Alcohol Counselor/mental health
During Emergency Detention

- Evaluation by two LMHPs (§5-412)
- If further treatment not needed, release before or at end of 120-hour period
- If further treatment needed and no agreement to voluntary admit, complete mental health evaluation, file petition & request pre-hearing detention
Mental Health Evaluation

Must have following findings:

◦ Whether person is a “person requiring treatment;”
◦ Whether person is likely to benefit from treatment;
◦ Whether inpatient treatment is least restrictive treatment necessary.
Initial contact by law enforcement

Protective Custody

120hrs

Petition

5 days excluding weekends & holidays
43A OS §5-208(A)(3)

Initial assessment by an LMHP defined by 43A OS §1-103(11)

Can last up to 12hrs.
43A OS §5-208(A)(1)

Initial assessment
43A OS §5-207(D)

If the person is a person requiring treatment for which emergency detention is necessary then the next phase begins

Sometime during the ED period MHE by 2 LMHPs
43A OS §5-208(A)(4)(a)

Pre-hearing Detention
43A OS §5-413(A)

72hrs excluding weekends & holidays
Substance Dependency

- Not simply under the influence or occasional use
- Uses 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
What Rights are Affected?

- Involuntary confinement = loss of freedom/liberty
  - No different than an arrest or imprisonment
  - You would not want it to happen to you
  - How important is the right to liberty?

- ED does not involve rights we associate with due process
  - No attorney
  - No hearing/trial
  - No right to be heard
Public Safety

- All mentally ill people are dangerous – right?
- Vast majority of people who are mentally ill are not violent
- Only around 3% of all violent crimes committed by seriously mentally ill
- Conversely, not all dangerous persons are mentally ill – e.g., some people are just mean
If not mentally ill AND dangerous

- No authority to confine
- May not constitutionally confine non-dangerous individual who is capable of surviving safely by himself or with help of family/friends
- Holding other such individuals violates civil rights (O’Connor v. Donaldson)
Persons not eligible for ED

- Not meeting inpatient criteria
- Confined to a jail or adult lockup facility per criminal charges may not be admitted for ED
  - Criminal charges, but out on bail - may be admitted for ED if facility takes reasonable steps to assure safety; 43A OS §5-101
  - A person in jail can be assessed to determine if they are a person requiring treatment.
- Persons confined to jail pursuant to criminal charges only admitted pursuant to treat until competent statutes
What if not mentally ill?

- Oklahoma has no commitment statutes for individuals who are not mentally ill
- Individuals who are intellectually disabled, dementia, etc. must receive services “voluntarily”
- May qualify for services as a “vulnerable adult”
Transportation

- Law enforcement is responsible for transporting individual to and from designated facilities for ED examination and treatment.

- Why? To meet criteria, person must be dangerous. Safer to have law enforcement transport.
  - Trained to deal dangerous individuals
  - Able to use mechanical restraints

- Entitled to reimbursement
Law Enforcement Dilemmas

- Potential liability/danger
- Transportation
  - Do not want to become taxi service (involuntary vs. voluntary – EMTALA/safety concerns)
  - Time (sit for hours waiting for evaluation)
  - Compensation (reimbursement only for mileage)
- Frustration
  - Take into protective custody an individual who appears mentally ill or dangerous and mental health facility refuses to admit
  - Continuous cycle - same individuals over and over
Assisted Outpatient Treatment

- If a person does not meet inpatient criteria, is there anything that can be done?
  - Assisted Outpatient Treatment

- What does this Act do?
  - Creates the ability to initially seek a court order for outpatient treatment instead of inpatient treatment
How Does It Work?

- Title 43A O.S. § 1–103(21) created a new definition: “Assisted Outpatient Treatment”
- "Assisted outpatient treatment" means outpatient services which have been ordered by the court pursuant to a treatment plan approved by the court to treat an assisted outpatient's mental illness
and to assist the person in living and functioning in the community, or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.
Who Qualifies for Assisted Outpatient Treatment?

- This option is for a person who:
  1. One of these:
     - under the care of a facility certified by the Department of Mental Health and Substance Abuse Services as a *Community Mental Health Center*,
     - is being discharged from the custody of the *Oklahoma Department of Corrections*,
     - or being discharged from a residential placement by *Office of Juvenile Affairs*. 
AOT criteria

2. is suffering from a mental illness;
3. is unlikely to survive safely in the community without supervision, based on a clinical determination;
AOT Criteria

4. has a history of lack of compliance with treatment for mental illness that has:
   - prior to the filing of a petition, at least twice within the last thirty-six (36) months been a significant factor in necessitating hospitalization or treatment in a hospital or residential facility, or receipt of services in a forensic or other mental health unit of a correctional facility, or
   - prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last twenty-four (24) months,
AOT criteria

5. is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community;

6. in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or persons as defined in this section, and
AOT criteria

- is likely to benefit from assisted outpatient treatment
Petitions filed to determine if an individual should be ordered to assisted outpatient treatment as defined by Section 1-103 of this title shall only be filed by a licensed mental health professional employed by the Department of Mental Health and Substance Abuse Services or employed by a community mental health center certified by the Department pursuant to Section 3-306.1 of this title.

A court may order the patient to self-administer psychotropic drugs or accept the administration of such drugs by authorized personnel as part of an assisted outpatient treatment program. Such order may specify the type and dosage range of such psychotropic drugs and such order shall be effective for the duration of such assisted outpatient treatment.
The initial order for assisted outpatient treatment shall be for a period of one (1) year. Within thirty (30) days prior to the expiration of the order, a licensed mental health professional employed by the Department of Mental Health and Substance Abuse Services or employed by a community mental health center certified by the Department pursuant to Section 3–306.1 of this title may file a petition to extend the order of outpatient treatment.
Notice shall be given in accordance with Section 5–412 of this title. The court shall hear the petition, review the treatment plan and determine if the assisted outpatient continues to meet the criteria for assisted outpatient treatment and such treatment is the least restrictive alternative.
If the court finds the assisted outpatient treatment should continue, it will make such an order extending the assisted treatment an additional year and order the treatment plan updated as necessary.
Non-Compliance

- Failure or refusal to comply with assisted outpatient treatment shall include, but not be limited to, a substantial failure to take medication, to submit to blood testing or urinalysis where such is part of the treatment plan, failure of such tests or failure to receive treatment for alcohol or substance abuse if such is part of the treatment plan.
Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.
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THE END