

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2184:

Ericson

AS INTRODUCED

An Act relating to mental health; creating the Sexually Violent Persons Act; providing short title; defining terms; providing for notice of release and referral with certain documentation; exempting certain persons from liability; establishing guidelines for evaluations; specifying who may file a petition; designating procedures; providing for continuous jurisdiction; requiring judicial determination of a sexually violent person; requiring the existence of probable cause; providing time limits and notice of hearing; designating certain rights; requiring evaluation after finding of probable cause; providing for trial; requiring proof beyond reasonable doubt; providing for commitment or release procedures; requiring annual examinations and reports; allowing certain persons to petition the court based on a change of status; providing for notice of hearing and procedures; allowing conditional release with certain restrictions; establishing certain findings prior to conditional release; establishing certain rights for committed persons; designating who may have access to treatment records and reports; authorizing revocation proceedings for noncompliance; requiring a hearing; requiring judicial determination of noncompliance; allowing certain persons to petition the court for a discharge; providing for notice of hearing and certain procedures; requiring notice of discharge to the Department of Corrections; designating the agency responsible for transportation; providing guidelines; exempting certain persons from liability; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-801 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 16 of this act shall be known and may be cited as the "Sexually Violent Persons Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-802 of Title 43A, unless there is created a duplication in numbering, reads as follows:

As used in the Sexually Violent Persons Act:

1. "Agency" means any agency that is authorized to direct the release of a person who is serving a sentence or term of confinement or who is receiving treatment, including a state or federal prison, a county jail, and the Department of Mental Health and Substance Abuse Services;

2. "Commissioner" means the Commissioner of Mental Health and Substance Abuse Services;

3. "Competent professional" means a person who is familiar with the sexually violent persons statutes and sexual offender treatment programs available in this state and has been approved by the court as meeting court-approved guidelines;

4. "Conviction" means a finding or plea of guilty for a sexually violent offense, a sentence as a youthful offender for a sexually violent offense, or an order of a court adjudicating a person delinquent for any sexually violent offense;

5. "Executive director" means the person in charge of a facility;

6. "Facility" means any hospital, building, house or retreat, authorized by law to have the care, treatment or custody of mentally ill persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites, or institutions;

7. "Less restrictive alternative" means court-ordered treatment in a setting that is less restrictive than total confinement and that is conducted in a setting approved by the executive director of the facility;

8. "Mental disorder" means a paraphilia, personality disorder, or conduct disorder or any combination of paraphilia, personality

disorder, and conduct disorder that predisposes a person to commit sexual acts to such a degree as to render the person a danger to the health and safety of others;

9. "Person" means an individual who is a potential or actual subject of proceedings under the Sexually Violent Persons Act;

10. "Sexually violent offense" means any of the following:

- a. rape as defined by Section 1111 of Title 21 of the Oklahoma Statutes,
- b. rape by instrumentation as provided for in Section 1111.1 of Title 21 of the Oklahoma Statutes,
- c. lewd or indecent proposals or acts to a child as provided for in Section 1123 of Title 21 of the Oklahoma Statutes,
- d. forcible sodomy as provided for in Section 888 of Title 21 of the Oklahoma Statutes,
- e. child sexual abuse as provided for in Section 7115 of Title 10 of the Oklahoma Statutes,
- f. child sexual exploitation as provided for in Section 7115 of Title 10 of the Oklahoma Statutes,
- g. sexual abuse or sexual exploitation by a caretaker as provided for in Section 843.1 of Title 21 of the Oklahoma Statutes,
- h. an attempt, solicitation, facilitation, or conspiracy to commit an offense listed in subparagraphs a through g of this paragraph,
- i. an act committed in another jurisdiction that, if committed in this state, would be a sexually violent offense listed in subparagraphs a through g of this paragraph, and
- j. a conviction for a felony offense that was in effect before September 1, 1984, that, if committed on or after September 1, 1984, would be comparable to a

sexually violent offense listed in subparagraphs a through g of this paragraph; and

11. "Sexually violent person" means a person to whom both of the following apply:

- a. has been convicted of, or acquitted on the ground of insanity of, a sexually violent offense or was charged with a sexually violent offense and was determined incompetent to stand trial, and
- b. has a mental disorder that makes the person likely to engage in acts of sexual violence.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-803 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If an agency that has jurisdiction over a person who is at least eighteen (18) years of age determines that the person may be a sexually violent person, the agency shall refer the person, in writing, to the Attorney General or to the district attorney in the county in which the person was convicted, was found incompetent, or will be released, not more than one hundred eighty (180) days and not less than thirty (30) days before the anticipated release:

1. From confinement of a person who was convicted at any time of a sexually violent offense;
2. Of a person who was acquitted on the ground of insanity of a sexually violent offense; or
3. Of a person who was charged with a sexually violent offense and who was determined to be incompetent to stand trial.

B. The agency shall provide the district attorney or the Attorney General with the following to support the written request that a petition be filed:

1. Certified copies of the following court documents:
 - a. the complaint, information, judgment of conviction, and commitment order for the sexually violent offense

that forms the basis for the petition and detention orders, and

- b. the complaint, information, judgment of conviction, and commitment order for any other conviction that the submitting agency possesses;

2. All records of evaluation and treatment, including any of the following:

- a. all psychological and psychiatric tests, assessment reports and supporting information,
- b. group notes, autobiographical notes, progress notes, psychosocial reports, or other materials that are prepared by or that relate to the person while the person was in custody or receiving treatment from the submitting agency or any other agency, and
- c. presentence investigation reports, whether prepared by the State Department of Corrections, by a private agency, or at the direction of the court for sentencing on the sexually violent offense;

3. All records, including the notes and records of all interviews and discussions with the person regarding the offense or offenses for which the person was convicted while the person was in the care of the submitting agency or any other agency;

4. A record of all convictions and acquittals of the person regardless of whether those convictions were for sexually violent offenses;

5. Police reports that are in the possession of the referring agency and that relate to any sexually violent offense that was committed by the person;

6. Institutional records that relate to the behavior and conduct of the person while in custody and that are in the possession of the referring agency;

7. Information indicating the dates of acceptance and rejection by the person of any recommended or court-ordered psychotropic medication to control the mental disorder of the person;

8. Information indicating the dates of acceptance and rejection by the person of any recommended or court-ordered psychological or psychiatric counseling for treatment of the mental disorder of the person; and

9. A final release or discharge report, together with any information on which the report is based, that is prepared in anticipation of the release of the person from incarceration or commitment. The report shall include:

- a. a report on the condition of the person that was completed within the preceding one hundred twenty (120) days and that includes an opinion expressing to a reasonable degree of psychiatric, psychological, or professional certainty that the person has a mental disorder and that, as a result of that mental disorder, the person is likely to engage in a sexually violent offense,
- b. a list of all the names of all treatment providers who have treated or worked with the person,
- c. the curriculum vitae of each of the treating individuals that details the education, training, and experience of the individual, and
- d. the facility in which the person is located at the time of the referral and in which the person will be residing pending the filing of a petition.

C. The agency and the officers and employees of the agency providing mental health evaluations and reports are immune from liability for any good faith acts done pursuant to this section.

D. The Department of Mental Health and Substance Abuse Services and directors and employees of the Department providing mental

health evaluations and reports are immune from liability for any good faith acts done pursuant to this section.

E. The inability of an agency to comply with the time requirements specified in subsection A of this section does not preclude the district attorney or the Attorney General from filing a petition alleging that a person is a sexually violent person.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-804 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If a person is subject to an examination under the Sexually Violent Persons Act, each party may select a competent professional to perform simultaneous evaluations of the person. The parties may stipulate to an evaluation by only one competent professional.

B. If the person is indigent, the court shall assist the person in retaining a competent professional to conduct the examination or to participate in the trial on behalf of the person.

C. Each competent professional shall be given reasonable access to the person in order to conduct the examination and shall share access to all relevant medical and psychological records, test data, test results, and reports.

D. A competent professional who is retained by a party or who is appointed by the court is not permitted to give testimony unless the competent professional exchanges information as required by this section and, at least ten (10) days before trial, submits to the court and all of the interested parties a written report of the evaluation of the person prepared by the competent professional.

E. At any proceeding held pursuant to this section, a competent professional who is retained by a party or who is appointed by the court is not subject to a court order for the sequestration of witnesses.

F. The court shall approve a reasonable amount to be paid from the court fund for the services of a competent professional

appointed by the court. In approving the amount to be paid, the court shall consider the time expended, services rendered, expenses incurred, and compensation received in the same case or for the same services from any other source.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-805 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Before a sexually violent person is released from confinement, the following persons may file a petition in the district court alleging that the person is a sexually violent person and stating sufficient facts to support that allegation:

1. The Attorney General;

2. The district attorney for the county in which the person was found incompetent to stand trial, acquitted on the ground of insanity, or convicted of a sexually violent offense; or

3. The district attorney for the county in which the person will be released if the person was found incompetent to stand trial, acquitted on the ground of insanity, or convicted of a sexually violent offense in another jurisdiction outside the state.

B. The Oklahoma Rules of Evidence and the Oklahoma Rules of Civil Procedure apply to proceedings held pursuant to the Sexually Violent Persons Act.

C. The person who is named in the petition is entitled to assistance of counsel at any proceeding that is conducted pursuant to the Sexually Violent Persons Act. If the person is indigent, the court shall appoint counsel to assist the person.

D. The jurisdiction of the court over a person who is civilly committed pursuant to the Sexually Violent Persons Act continues until the person is discharged by the court.

E. At any hearing concerning conditions of detention, commitment, or treatment at a licensed facility under the supervision of the executive director of the facility, a person who

is detained or committed pursuant to the Sexually Violent Persons Act shall show that the procedures or actions of the licensed facility have no reasonable basis in fact or law.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-806 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. On the filing of a petition pursuant to Section 5 of this act, the judge shall determine if probable cause exists to believe that the person named in the petition is a sexually violent person.

B. If the judge determines that probable cause exists to believe that the person named in the petition is a sexually violent person, the judge shall order that the person be detained in a licensed facility under the supervision of the executive director of the facility.

C. On motion of the respondent filed within ten (10) days after service of the petition, the court shall hold a probable cause hearing.

D. Within seventy-two (72) hours after a person is detained pursuant to subsection B of this section, the court shall provide the person with notice of and an opportunity to appear at a probable cause hearing to contest the probable cause finding made by the court pursuant to subsection A of this section. At the hearing, the court shall verify the identity of the person and shall determine if probable cause exists to believe that the person is a sexually violent person. At the hearing, the district attorney or the Attorney General may rely on the petition that alleges that the person is a sexually violent person as filed pursuant to Section 5 of this act. The district attorney or the Attorney General may supplement the information in the petition with additional documentary evidence or live testimony.

E. At the probable cause hearing, the person has the following rights:

1. To present evidence on behalf of the person;
2. To cross-examine witnesses who testify against the person;

and

3. To view and copy all documents and reports in the court file.

F. After the hearing, if the court determines probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

G. If at the hearing the court reaffirms that probable cause exists to believe that the person is a sexually violent person, the judge shall order an evaluation as to whether the person is a sexually violent person. The individual whom the court selects from a list of competent professionals shall conduct the evaluation. The county shall pay the costs of the evaluation.

H. The referring agency shall make available to the Department of Mental Health and Substance Abuse Services all records concerning the person detained pursuant to this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-807 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Within one hundred twenty (120) days after a petition is filed pursuant to Section 5 of this act, the court shall conduct a trial to determine if the person named in the petition is a sexually violent person. The district attorney, Attorney General, or the person named in the petition may request a jury trial. If no request is made, the trial shall be before the court. The judge may continue the trial at the request of either party on a showing of good cause or on its own motion if the person will not be substantially prejudiced.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-808 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The court or jury shall determine beyond a reasonable doubt if the person named in the petition is a sexually violent person. If the district attorney or the Attorney General alleges that the sexually violent offense on which the petition for commitment is based was sexually motivated, the district attorney or the Attorney General shall prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

B. If the court or jury determines that the person is a sexually violent person, the court shall either:

1. Commit the person to the custody of the Department of Mental Health and Substance Abuse Services for placement in a licensed facility under the supervision of the executive director of the facility who shall provide care, supervision, or treatment until the mental disorder of the person has so changed that the person would not be a threat to public safety if the person was conditionally released to a less restrictive alternative or was unconditionally discharged; or

2. Order that the person be released to a less restrictive alternative if the conditions specified in Sections 10 and 11 of this act are met.

C. If the court or jury does not determine beyond a reasonable doubt that the person is a sexually violent person, the court shall order the release of the person.

D. If the person named in the petition was found incompetent to stand trial, the court shall first hear evidence and determine if the person committed the act or acts charged, if the court did not enter a finding before the charges were dismissed. The court shall enter specific findings on whether the person committed the act or acts charged, the extent to which the incompetence of the person to stand trial affected the outcome of the hearing, including its effect on the ability of the person to consult with and assist counsel and to testify on their own behalf, the extent to which the

evidence could be reconstructed without the assistance of the person, and the strength of the case presented by the district attorney or Attorney General. If the court finds beyond a reasonable doubt that the person committed the act or acts charged, the court shall enter a final order to that effect and may then consider whether the person should be committed pursuant to this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-809 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The psychiatrist, psychologist, or other professional of the facility under the supervision of the executive director of the facility shall annually examine each person who is committed pursuant to the Sexually Violent Persons Act. The person who conducts the annual examination shall submit the examination report to the court. The annual report shall state if conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community.

B. The person may retain or, on the request of an indigent person, the court may appoint a competent professional to conduct the examination. A retained or appointed competent professional shall have access to all records concerning the person. If the person retains or is appointed a competent professional, the district attorney or the Attorney General has the right to have the committed person evaluated by a competent professional that it has selected. All competent professionals shall have equal access to the person as well as all records concerning the person.

C. The court shall hold a hearing pursuant to Section 10 of this act if any change of release conditions is recommended.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-810 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the executive director of the state hospital or the Commissioner of Mental Health and Substance Abuse Services determines that the mental disorder of the person has so changed that the person is not likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative, the executive director or Commissioner shall allow the person to petition the court for conditional release to a less restrictive alternative. The person shall serve the petition on the court and the district attorney or the Attorney General. The court shall hold a hearing on the petition for conditional release to a less restrictive alternative within forty-five (45) days after receiving the petition. The court may continue the hearing on the request of either party and a showing of good cause or on its own motion if the respondent will not be substantially prejudiced. The district attorney or the Attorney General shall represent the state at the hearing and may request that the petitioner be examined by a competent professional selected by the district attorney or the Attorney General. The district attorney or the Attorney General has the burden of proving beyond a reasonable doubt that the mental disorder of the petitioner has not changed and that the petitioner remains a danger to others and is likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged.

B. This section does not prohibit the committed person from annually petitioning the court for conditional release to a less restrictive alternative without the approval of the executive director of the state hospital or the Commissioner of Mental Health and Substance Abuse Services. The Commissioner of Mental Health and Substance Abuse Services shall give annual written notice to the committed person of the right to petition the court for conditional release to a less restrictive alternative without the approval of the executive director or the Commissioner. The notice shall

contain a waiver of rights. The Commissioner shall submit the notice and waiver to the court with the annual examination report.

C. The committed person may be present at the hearing. The district attorney or the Attorney General may request that the person be examined by a competent professional selected by the district attorney or the Attorney General. The committed person may retain and the court, on request of an indigent person, may appoint a competent professional. The district attorney or Attorney General has the burden of proving beyond a reasonable doubt that the mental disorder of the person has not changed and that the person remains a danger to others and is likely to engage in acts of sexual violence if conditionally released to a less restrictive alternative. If the state does not meet its burden of proof, the person shall be discharged from treatment.

D. If at the conclusion of a hearing, the court finds that there is no legally sufficient evidentiary basis to conclude that the conditions prescribed in Section 12 of this act have been met, the court shall grant the motion of the state for a judgment on the issue of conditional release to a less restrictive alternative.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-811 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the court determines that conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community and the court determines that the minimum conditions specified in Section 12 of this act are met, the court shall enter judgment and order the conditional release of the person to a less restrictive alternative.

B. The court may impose any additional conditions on the person that the court determines are necessary to ensure the compliance of the person with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the

compliance of the person with treatment and protect the community, the court shall remand the person to the custody of the executive director of the facility for care, supervision, or treatment in a licensed facility that is under the supervision of the executive director.

C. If the provider that is designated to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of the placement of the person in a less restrictive alternative is not the state hospital, the provider shall agree in writing to provide the treatment.

D. Before the court authorizes the conditional release of a person to a less restrictive alternative, the court shall impose any conditions on the person that the court determines are necessary to ensure the safety of the community. The conditions shall include that, prior to release to a less restrictive alternative, a person shall be required to submit to ninety (90) days of inpatient evaluation at the state hospital. At the discretion of the executive director of the state hospital, the duration of the evaluation period may be less than ninety (90) days. The court shall order the executive director of the state hospital to investigate the less restrictive alternative and to submit additional conditions to the court. The court shall give a copy of the conditions of release to the person and to any designated service provider. Other conditions may include any of the following:

1. Specification of a residence;
2. Prohibition of any contact with potential or past victims;
3. Prohibition on the use of alcohol and other drugs;
4. Supervision by the Department of Mental Health and Substance Abuse Services or the county probation department if the person is serving a term of probation;

5. A requirement that the person remain in this state unless the person receives prior authorization from the court to leave the state; and

6. Other conditions that the court or the executive director of the state hospital determines are in the best interest of the person or others.

E. Following a determination that the release of a person to a less restrictive alternative is warranted and after considering the recommendation regarding the duration and amount of treatment by the executive director of the state hospital, the court shall require as a condition of release to a less restrictive alternative that the person participate in outpatient treatment. The outpatient supervision and treatment may include monitoring a person by use of a polygraph or plethysmograph or both. The treatment shall continue until the court orders a change in the treatment requirements or the person is discharged pursuant to Section 15 of this act.

F. Each month or as otherwise directed by the court, each designated service provider shall submit a report that states if the person is complying with the terms and conditions of the conditional release to a less restrictive alternative to:

1. The court;
2. The facility from which the person was released; and
3. The Attorney General or district attorney in the county where the person was found to be a sexually violent person.

G. The court shall review the case of each person who is conditionally released to a less restrictive alternative within one (1) year after the release of the person and thereafter on a motion of either party or the executive director of the state hospital or upon a motion made by the court until the person is discharged. At a case review, the court shall determine only if the person shall continue to be conditionally released to a less restrictive alternative. In making its determination, the court shall consider

the periodic reports that are submitted to the court pursuant to subsection F of this section and the opinions of the executive director of the state hospital and any other competent professional.

H. If a person is conditionally released to a less restrictive alternative, the Department of Mental Health and Substance Abuse Services shall notify the Department of Corrections of the release of the person so that the Department of Corrections can commence any notification process as provided in Section 584 of Title 57 of the Oklahoma Statutes.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-812 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Before the court orders that a person be conditionally released to a less restrictive alternative, the court shall find that all of the following apply:

1. The person will be treated by a provider who is qualified to provide the necessary treatment in this state;

2. The provider:

- a. presents a specific course of treatment for the person,
- b. agrees to assume responsibility for the treatment of the person,
- c. will report on the progress of the person to the court on a regular basis, and
- d. will report any violations as prescribed in paragraphs 4 and 5 of this section immediately to the court, the district attorney or the Attorney General, and the executive director of the state hospital;

3. The person who is conditionally released to a less restrictive alternative has housing arrangements that are sufficiently secure to protect the community, and the person or

agency that is providing the housing to the conditionally released person agrees in writing to the following conditions:

- a. to accept the conditionally released person,
- b. to provide the level of security that the court requires, and
- c. to immediately report the unauthorized absence of the conditionally released person from the housing arrangement to which the person has been assigned;

4. The person will comply with the provider and all of the requirements that are imposed by the provider and the court; and

5. The person will comply with the supervision requirements that are imposed by the Department of Mental Health and Substance Abuse Services or the county probation department if the person is serving a term of probation.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-813 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. A person who is committed or conditionally released to a less restrictive alternative pursuant to the Sexually Violent Persons Act does not forfeit any legal right and shall not suffer any legal disability as a consequence of any actions taken or orders made except as specifically provided in the Sexually Violent Persons Act.

B. A person who is committed or conditionally released to a less restrictive alternative pursuant to the Sexually Violent Persons Act shall receive care, supervision, or treatment. The executive director of the state hospital shall keep records detailing all medical, expert, and professional care and treatment that a committed person receives and shall keep copies of all reports of periodic examinations that are made pursuant to the Sexually Violent Persons Act. These records and reports shall be made available on request only to any of the following:

1. The committed person;
2. The attorney of the committed person;
3. The district attorney or the Attorney General;
4. The court;
5. On proper showing, an expert or professional person who demonstrates a need for access to the records or reports; and
6. Any mental health professional directly responsible or associated with the mental health professional who is directly responsible for the care, control, assessment, or treatment of the committed person.

C. At the time a person is detained or transferred into a licensed facility pursuant to the Sexually Violent Persons Act, the person in charge of the facility or the designee of the person shall take reasonable precautions to inventory and safeguard the personal property of the detained or transferred person. The staff member who makes an inventory of the personal property of the person shall give a signed copy of that inventory to the person. The facility shall allow a responsible relative to inspect the property, subject to any limitations that the person specifically imposes. The facility shall not disclose the contents of the inventory to any other persons without the consent of the person or a court order.

D. The Sexually Violent Persons Act does not prohibit a person who is committed or conditionally released to a less restrictive alternative from exercising any right that is available for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus. The committed person must exhaust all direct appeal and postcommitment procedures before exercising the right of the committed person to petition for a writ of habeas corpus.

E. For purposes of this section, "responsible relative" means the spouse, parent, adult child, or adult sibling of the person and includes the guardian, conservator, or attorney of the person.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-814 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the petitioner or the court believes that the person who is conditionally released to a less restrictive alternative is not complying with the terms and conditions of release or is in need of additional care and treatment, the designated service provider, the district attorney, or the Attorney General may petition the court for, or the court on its own motion may schedule, a hearing for the purpose of revoking or modifying the terms and conditions of the conditional release of the person. The hearing shall be held within ten (10) days after the petition is filed.

B. If the district attorney, Attorney General, or the court reasonably believes that a person who is conditionally released to a less restrictive alternative is not complying with the terms and conditions of the conditional release, is in need of additional care or treatment, or if the circumstances of the release have changed so that the community is no longer safe, the court, the Department of Mental Health and Substance Abuse Services, or the probation officer may order that the conditionally released person be detained and taken into custody until a hearing can be scheduled to determine if the conditional release of the person should be revoked or modified. The court shall be notified before the close of the next judicial day of the detention of the person. The district attorney or the Attorney General and the conditionally released person may request an immediate mental examination of the person. If the conditionally released person is indigent, the court, on request, shall assist the person in obtaining a competent professional to conduct the examination.

C. Within five (5) days after receiving notice of the detention of the person, the court shall schedule a hearing. At the hearing,

the court shall determine if the state has proved by a preponderance of the evidence:

1. That the person who is conditionally released to a less restrictive alternative did not comply with the terms and conditions of release;

2. That the person is in need of additional care or treatment;

3. That the circumstances of the release have changed so that the community is no longer safe;

4. That the person should continue on conditional release under the same or modified conditions; or

5. That the conditional release should be revoked and the person should be committed to total confinement, subject to release only under the provisions of this section.

The court may admit hearsay evidence if the court finds that the hearsay evidence is otherwise reliable.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-815 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the executive director of the state hospital or the Commissioner of Mental Health and Substance Abuse Services determines that the mental disorder of the person has so changed that the person is not likely to engage in acts of sexual violence if discharged, the executive director or Commissioner shall allow the person to petition the court for discharge. The person shall serve the petition on the court and the district attorney or the Attorney General. The court shall hold a hearing on the petition for discharge within forty-five (45) days after receiving the petition. The court may continue the hearing on the request of either party and a showing of good cause or on its own motion if the respondent will not be substantially prejudiced. The district attorney or the Attorney General shall represent the state at the hearing and may request that the petitioner be examined by a

competent professional who is selected by the district attorney or the Attorney General. The district attorney or the Attorney General has the burden of proving beyond a reasonable doubt that the mental disorder of the petitioner has not changed and that the petitioner remains a danger to others and is likely to engage in acts of sexual violence if discharged.

B. This section does not prohibit the committed person from annually petitioning the court for discharge without the approval of the executive director of the state hospital or the Commissioner of Mental Health and Substance Abuse Services. The Commissioner of Mental Health and Substance Abuse Services shall give annual written notice to the committed person of the right to petition the court for discharge without the approval of the executive director or the Commissioner. The notice shall contain a waiver of rights. The Commissioner shall submit the notice and waiver to the court with the annual examination report.

C. The committed person may be present at the discharge hearing. The district attorney or the Attorney General may request that the person be examined by a competent professional who is selected by the district attorney or the Attorney General. The committed person may request to be examined by a competent professional selected by the committed person. If the committed person is indigent, the court may authorize the appointment of a competent professional to be paid from the court fund. The district attorney or the Attorney General has the burden of proving beyond a reasonable doubt that the mental disorder of the person has not changed and that the person remains a danger to others and is likely to engage in acts of sexual violence if discharged. If the state does not meet its burden of proof, the person shall be discharged from treatment.

D. If a person is discharged, the Department of Mental Health and Substance Abuse Services shall notify the Department of

Corrections of the discharge of the person so that the Department of Corrections can commence any notification process as provided in Section 584 of Title 57 of the Oklahoma Statutes.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-816 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Department of Mental Health and Substance Abuse Services is responsible for the transportation to and from a medical facility of a person who is detained or committed pursuant to the Sexually Violent Persons Act. The Department of Mental Health and Substance Abuse Services shall determine the appropriate mode of transportation and level of security and restraint for the transportation needs of the person. In determining the appropriate mode of transportation and level of security and restraint, the Department shall consider the safety of the public, the transporting personnel, and the detained or committed person.

B. The Department of Mental Health and Substance Abuse Services and any county sheriff are immune from liability for any good faith acts performed pursuant to this section.

SECTION 17. This act shall become effective November 1, 2004.

49-2-7889 GRS 01/02/04