STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2864

By: Wallace of the House

and

Bullard of the Senate

COMMITTEE SUBSTITUTE

[ mental health - fund - expenditures - mental health services - transport - protective custody and detention - codification - 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 1-110.1 of Title 43A, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Department of Mental Health and Substance Abuse Services to be designated the “Mental Health Transport Revolving Fund”. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department from appropriations or other monies directed to the fund. All monies accruing to the credit of the fund are hereby
appropriated and may be budgeted and expended by the Department to
carry out the provisions of Section 1-110 of Title 43A of the
Oklahoma Statutes. Expenditures from the fund shall be made upon
warrants issued by the State Treasurer against claims filed as
prescribed by law with the Director of the Office of Management and
Enterprise Services for approval and payment.

SECTION 2. AMENDATORY 43A O.S. 2021, Section 1-110, is
amended to read as follows:

Section 1-110. A. Sheriffs As an alternative to transport
under subsection B of this section for the sole purpose of initial
assessment of a person who the officer reasonably believes is a
person requiring treatment, as defined in Section 1-103 of this
title, sheriffs and peace officers may request an assessment at the
point of initial contact by the Department of Mental Health and
Substance Abuse Services. To conduct the assessment, the Department
may utilize telemedicine:

1. Telemedicine, when such capability is available and is
through a mobile computing device in the possession of the local law
enforcement agency, to have a person whom the officer reasonably
believes is a person requiring treatment, as defined in Section 1-103 of this title, the person assessed by a licensed mental health
professional employed by or under contract with a facility operated
by, certified by or contracted with the Department of Mental Health
and Substance Abuse Services; or
2. An in-person assessment by a licensed mental health professional on a mobile crisis response team or who is employed by or under contract with a facility operated by, certified by or contracted with the Department.

B. 1. To serve the mental health needs of persons of their jurisdiction, peace officers shall be responsible for transporting individuals in need of:

a. initial assessment, except when the individual has been assessed at the point of initial contact by the Department under subsection A of this section, or

b. emergency detention or protective custody under Section 5-207 of this title, unless the officer has already transported the individual to the facility for initial assessment,

from the initial point of initial contact to the nearest facility, as defined in Section 1-103 of this title, that is appropriate for initial assessment or treatment of the individual within a thirty (30) mile thirty-mile radius of the peace officer’s operational headquarters.

2. Transportation to the nearest appropriate facility shall be completed by either the Department of Mental Health and Substance
Abuse Services or an entity contracted by the Department for alternative transportation if:

a. there is not an appropriate facility within a thirty-mile radius of the peace officer’s operational headquarters, or

b. the officer has already transported the individual to an appropriate facility for initial assessment.

3. For purposes of this section, “initial contact” is defined as contact with an individual in need of assessment, emergency detention or protective custody made by a law enforcement officer. Initial contact in this section does not include an individual self-presenting at a facility as defined in Section 1-103 of this title.

4. When an individual self-presents at a facility as defined in Section 1-103 of this title or at a medical facility and is placed into protective custody under Section 5-207 of this title due to a determination that the individual is a person requiring treatment as defined in Section 1-103 of this title, and if transport to another facility is needed for initial assessment or treatment, the person shall be transported to the nearest appropriate facility as provided by this subsection.

5. When an individual self-presents at a facility as defined in Section 1-103 of this title or at a medical facility and is not placed into protective custody under Section 5-207 of this title, but consents to voluntary transport to a facility as defined in
Section 1-103 of this title for treatment, transport or the
arrangement of transport shall be the responsibility of the facility
receiving the individual, unless the individual chooses to arrange
his or her own transportation.

6. The transportation requirements provided by this subsection,
to the extent such requirements are applicable to peace officers,
shall be considered fulfilled once the person has been transported
to the facility, the officer has made contact with the appropriate
staff of the facility, and the staff of the facility have determined
that the patient does not present a clear or immediate threat to his
or her own safety or to the safety of the staff of the facility.

Once custody of the individual has been transferred to the
appropriate facility staff, the peace officer shall not be required
to remain at the facility with the individual pending initial
assessment or treatment.

D. A municipal law enforcement agency shall be responsible
for transportation as provided in this act section for any
individual found within such municipality’s jurisdiction. The
county sheriff shall be responsible for transportation as provided
in this act section for any individual found outside of a
municipality’s jurisdiction, but within the county.

E. Once an individual has been presented to the an
appropriate facility as provided in subsection A B of this section,
by a transporting law enforcement officer, the transporting law
enforcement agency the Department of Mental Health and Substance Abuse Services or an entity contracted by the Department shall be responsible for any subsequent transportation of such individual pending completion of the initial assessment, emergency detention, protective custody or inpatient services within a thirty (30) mile radius of the peace officer’s operational headquarters. All transportation over thirty (30) miles must be completed by either the Department of Mental Health and Substance Abuse Services or an entity contracted by the Department for alternative transportation.

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 initial assessment, 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 initial assessment, admission, interfacility transfer, medical treatment or court appearance shall be reimbursed in accordance with the provisions of the State Travel Reimbursement Act.

G. Nothing in this section shall prohibit a law enforcement agency or the Department of Mental Health and Substance Abuse Services from entering into a lawful agreement with any other law enforcement agency to fulfill the requirements established by this
section or from contracting with a third party to provide the services established by this section, provided the third party meets minimum standards as determined by the Department.

G. H. A law enforcement agency shall not be liable for the actions of a peace officer commissioned by the agency when such officer is providing services as a third party pursuant to subsection F G of this section outside his or her primary employment as a peace officer.

SECTION 3. AMENDATORY 43A O.S. 2021, Section 5-207, as amended by Section 3, Chapter 297, O.S.L. 2022 (43A O.S. Supp. 2022, Section 5-207), is amended to read as follows:

Section 5-207. 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. 1. 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.
2. Upon taking the person into protective custody, the officer may relinquish custody of the person believed to require treatment to a duly qualified reserve officer or deputy employed by the same agency to fulfill the officer’s duties as required by this title.

   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 an urgent recovery clinic or to the nearest facility, as defined in Section 1-103 of this title, for an initial assessment within a thirty (30) mile thirty-mile radius
of the peace officer’s operational headquarters, or may use
telemicine with a licensed mental health professional employed or
under contract with a facility operated by, certified by or
contracted with request an assessment at the point of initial
contact by the Department of Mental Health and Substance Abuse
Services to perform an initial assessment as provided by subsection
A of Section 1-110 of this title. If, subsequent to an initial
assessment, it is determined that emergency detention is warranted,
the officer shall immediately transport the person shall immediately
be transported to the nearest facility that is appropriate for
treatment of the individual and has bed space available if the
facility is within thirty (30) miles of the peace officer’s
operational headquarters and the individual was has been determined
to be a person requiring treatment. The Department of Mental Health
and Substance Abuse Services may contract for the use of alternative
transportation providers to transport individuals to facilities
designated for emergency detention when the nearest facility with
available bed space is more than thirty (30) miles from the peace
officer’s operational headquarters and the individual was determined
to be a person requiring treatment. Transport shall be provided in
accordance with subsection B of Section 1-110 of this title.

E. For the purposes of this section, “urgent recovery clinics”
means clinics that offer voluntary services aimed at the assessment
and immediate stabilization of acute symptoms of mental illness,
alcohol and other drug abuse and emotional distress; provided that, unless the person consents to a longer duration, no more than twenty-three (23) hours and fifty-nine (59) minutes of services are provided to a consumer during one episode of care.

F. If it is determined by the facility director or designee that the person is not medically stable, the officer Department shall immediately transport the person to the nearest hospital or other appropriate treatment facility.

E. If the person is medically unstable, the person may be transported to an appropriate medical facility for medical treatment. A treating physician may authorize that the person be detained until the person becomes medically stable. The time limit on the emergency detention period stipulated under Section 5-208 of this title shall be tolled until the person who appears to be a person requiring treatment is medically stabilized. When the person becomes medically stable, if in the opinion of the treating or discharging physician, the patient is still a person requiring treatment as defined in Section 1-103 of this title, the physician shall authorize detention of the patient for transportation as provided in subsection D of this section.

F. G. 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 Sections 5-206 through 5-209 of this title.

SECTION 4. This act shall become effective November 1, 2023.