



CRISIS INTERVENTION TEAM

# Mental Health Law

Title 43A



# Purpose of this Course



**To provide participants with an overview of Oklahoma's Mental Health Laws related to Emergency Detentions.**

# What We'll Cover



- 1. State of Oklahoma Mental Health Law**
- 2. Self-Admissions**
- 3. Law Enforcement Officer Affidavits**
- 4. Conditions Outside of Mental Illness**
- 5. Emergency Detention Stages**
- 6. Officer Safety**

# Questions to Consider



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

# First Things First!!!



**Officer safety is central,  
paramount and critical.**

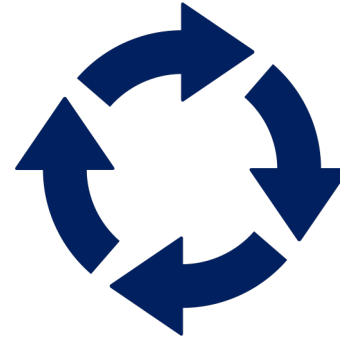
**Never sacrifice officer safety to show  
respect or care for someone else.**

The safety of all individuals is crucial, but we must be certain  
we are safe in what we are doing first.



**As a Law Enforcement Officer, do we complete an  
Emergency Detention?**

No, we do not complete Emergency Detentions. We are just a part of the process



# **Emergency Detention is a Process**

## **What is role of LE? Protective Custody**

# Emergency Detention Process



**When an individual is in crisis, there is a process for getting them assistance.**

**1**

**An individual is placed in "Protective Custody"**

- Placing a person in detention to get them before a Licensed Mental Health Professional (LMHP)
- An Emergency Detention is not always the result of every protective custody

**2**

**Usually begins with protective custody-THIS IS US!!!**

- Initial Assessment/Mental Health Evaluation
- Evaluation by 2 Licensed Mental Health Professionals (LMHP)

**3**

**The individual can be detained for up to 120 hours**



# State of Oklahoma Mental Health Law

# When can the state hold someone against their will?

\*Remember, we are the “State”

1

## Threat to others – police power

- State has authority under its police power to protect community from individuals who are dangerous due to a mental illness.

2

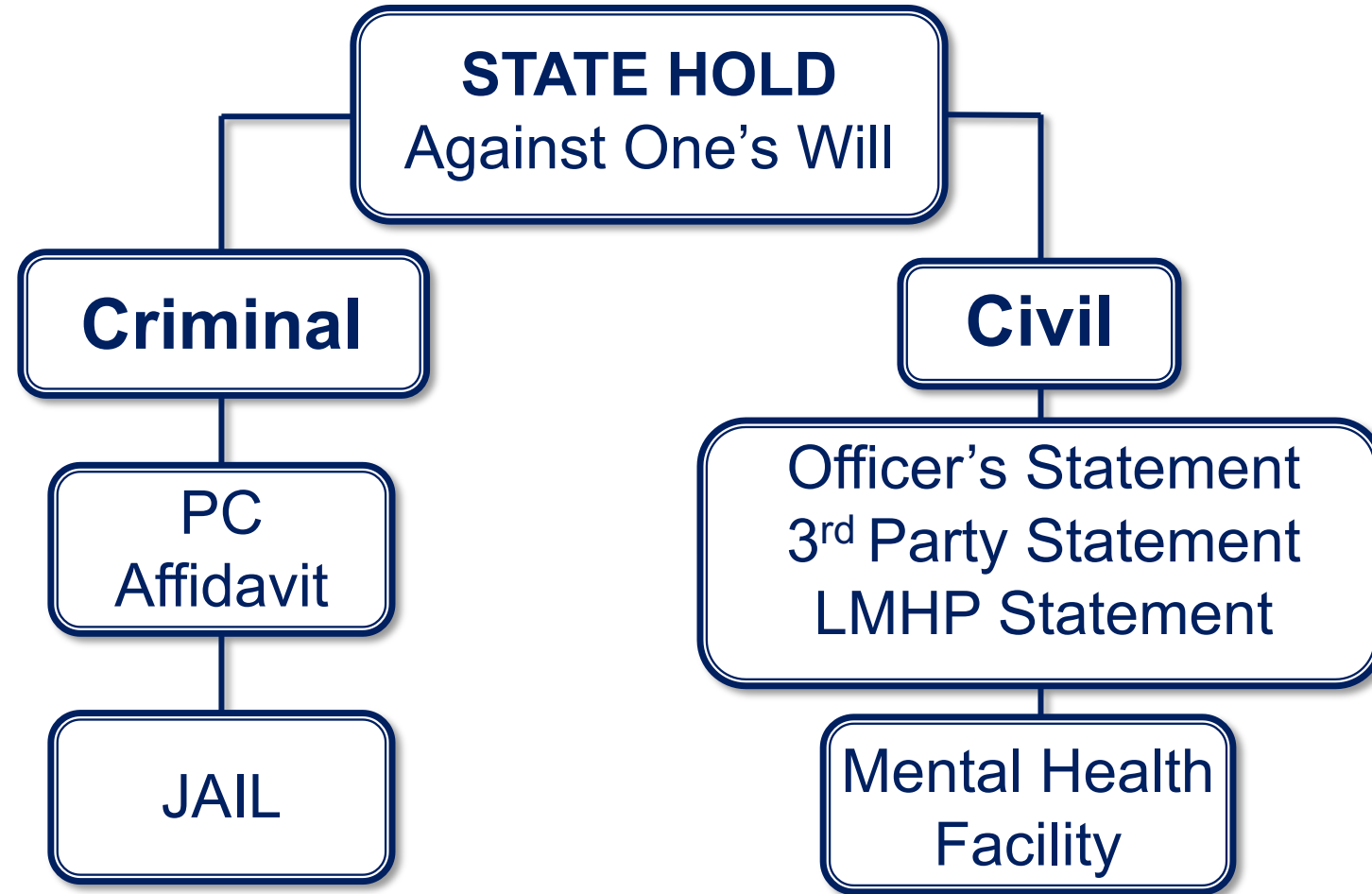
## Threat to self – *parens patriae*

- The power of the state to act as guardian for those who are unable to care for themselves, such as children or disabled individuals.

[Addington vs Texas, 441 U.S. 418 \(1979\)](#)

# State's Authority to Hold

(Per OK Statutes)



# State's Authority to Hold

(Per OK Statutes)



## Title 43A O.S. § 5-207

- This is the title that allows us to take someone into protective custody
  - 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.

[43A O.S. § 5-207 – Protective Custody](#)

# State's Authority to Hold (cont.)

(Per OK Statutes)



## Title 43A O.S. § 5-207 (Continued)

- B. Any peace officer who reasonably believes that a person is a person requiring treatment as defined in [Section 1-103](#) of this title **shall (when reasonable)** take the person into protective custody.

The officer **shall** make every reasonable effort to take the person into custody in the least conspicuous manner.

[43A O.S. § 5-207 – Protective Custody](#)

# What is Mental Illness?



## Title 43A O.S. § 1-103 – Definitions

### *Mental Illness*

- 3. *"Mental illness" means a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgement, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.*

[43A O.S. § 1-103 – Definitions](#)

# Mental Health Consumer | Defined



- **Title 43A O.S. § 1-103 – Definitions**

## *Consumer*

- *8. A person under care or treatment in a facility pursuant to the Mental Health Law, or in an outpatient status.*

[43A O.S. § 1-103 – Definitions](#)

# Person Requiring Treatment | Criteria



- **Title 43A O.S. § 1-103 – Definitions**

- 13a. "Person requiring treatment" is 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,
  - 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 a person or persons or serious physical harm to them as manifested by serious and immediate threats,

[43A O.S. § 1-103 – Definitions](#)



# Person Requiring Treatment | Criteria (cont.)



- **Title 43A O.S. § 1-103 – Definitions**

- 13a. "Person requiring treatment" is a person, who because of his or her mental illness or drug or alcohol dependency:
  - 4) Is in a condition of severe deterioration 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 an is not providing for his or her basic physical needs.

[43A O.S. § 1-103 – Definitions](#)

# Person Requiring Treatment | Criteria (cont.)



- **Title 43A O.S. § 1-103 – Definitions**

- *13b. The mental health or substance abuse history of the person may be used as part of the evidence to determine whether the person is a person requiring treatment or an assisted outpatient. The mental health or substance abuse history of the person shall not be the sole basis for this determination.*

[43A O.S. § 1-103 – Definitions](#)



# Minor vs. Person in Need of Treatment

# A Minor Requiring Treatment | Defined



## Title 43A O.S. § 5-502 – Definitions

- 2. a. “Minor in need of treatment” means a minor who because of his or her mental illness or drug or alcohol dependency:
  - 1) Poses a substantial risk of physical harm to self in the near future as manifested by evidence of serious threats of or attempts at suicide or other significant self-inflicted bodily harm,
  - 2) Poses a substantial risk of physical harm to another person or persons in the near future 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 or serious harm directed toward such person or persons as manifested by serious and immediate threats.

[43A O.S. § 5-502 – Minors in Need of Treatment](#)

# A Minor Requiring Treatment | Defined (cont.)



## Title 43A O.S. § 5-502 – Definitions

- 2. a. *“Minor in need of treatment” means a minor who because of his or her mental illness or drug or alcohol dependency:*
  - 4) *Is in a condition of severe deterioration such that, without intervention, there exists a substantial risk that a severe impairment or injury to the minor will result in the near future, or*
  - 5) *Poses a substantial risk of serious physical injury to self or death in the near future 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. § 5-502 – Minors in Need of Treatment](#)

# A Minor Requiring Treatment | Defined (cont.)



## Title 43A O.S. § 5-502 – Definitions

- Inpatient Mental Health and Substance Abuse Treatment of Minors Act
  - 2. b. *The mental health or substance abuse history of the minor may be used as part of the evidence to determine whether the minor is a minor in need of treatment as defined in this section. The mental health of substance abuse shall not be the sole basis for this determination.*
  - 2. c. *The term “minor in need of treatment” shall not mean a minor afflicted with epilepsy, a developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the criteria for a minor in need of treatment pursuant to subparagraph a. or b. of this paragraph.*

[43A O.S. § 5-502 – Minors in Need of Treatment](#)

# Drug or Alcohol Dependency and Criteria



- 1** Simply being under the influence does not meet criteria
- 2** The individual must be using 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.

# Level of Suspicion for Protective Custody



- 1 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.”
- 2 The mental health statutes do not define “reasonable belief.”
- 3 Equates to **Probable Cause**.



# Self-Admissions

# What Makes a Self-Admit Appropriate?



- Can we escort a self-admit to a facility?
- Might also consider the following:
  - Do they meet the criteria once appropriate questions are asked?
  - Are they refusing to provide details or express concerns, but they are willing to go for treatment?
  - What if they meet the criteria but are willing to go to treatment voluntarily?
  - What if they meet the criteria, but are unwilling to go to treatment voluntarily, or it would be dangerous for them to go on their own or in a private vehicle?

# What Makes a Self-Admit Appropriate? cont'd



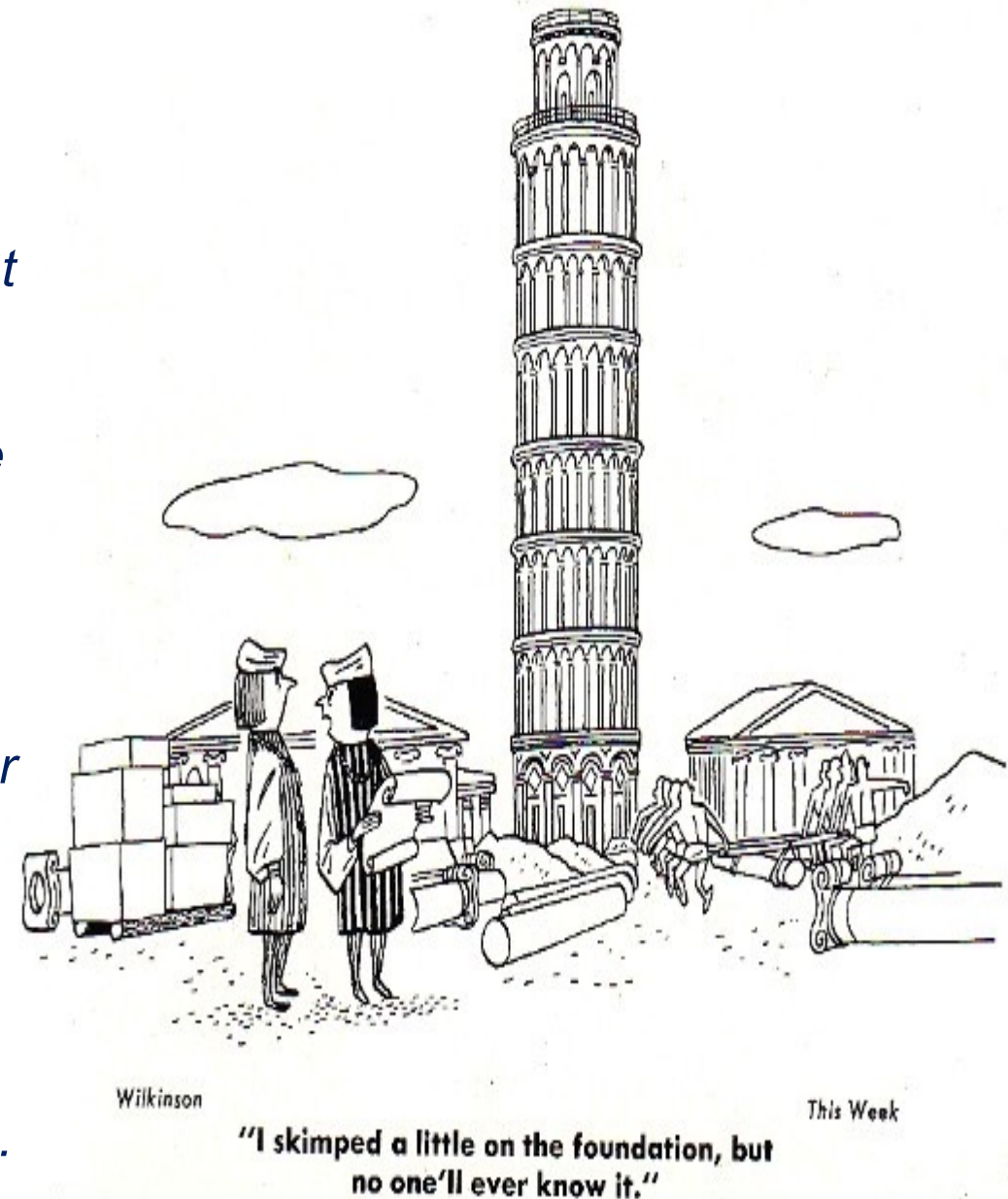
- When did they last sleep?
- When did they last eat?
  - What did they last eat?
- Are they taking any medication?
  - Are they supposed to take prescribed medication for a physical or mental health issue that they are not taking?
  - Do they have access to that medication?
- Are they dressed appropriately for the weather?
- If they are suicidal, do they have a plan and means?
- If you leave right now, will their condition improve on its own?

# Law Enforcement Officer Statements

# Officer's Statements

## Title 43A O.S. § 5-207 – Protective Custody

- *C. The officer shall prepare a written statement indicating the basis for the officer's belief that the person requiring treatment and the circumstances under which the officer took the person into protective custody.*
- *...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's person 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.*



# Officer's Statements (Things to Not Write)



- “They were acting crazy.”
- “They are out of touch with reality.”
- “She’s suicidal.”
- “He seemed out of it.”
- “They are delusional.”
- “He was hallucinating.”

# Officer's Statements (Things you Wrote)



- “Suspect was acting erratic, they did not follow verbal commands, they were not speaking in clear sentences, they were not acting normal.”
- “The defendant was talking or mumbling to themselves.”

Decent, but could use more clarification. What is “acting erratic”? What is “not acting normal”?

# Officer's Statements (Things you Wrote)

cont'd



 • **“John appeared to be talking to himself while fighting with police.”**

 • **“Without immediate treatment, crisis will continue.”**



# Officer's Statements (Things to Write)



- **Exact quotes:**

- “The praying mantis is coming to rule the world.”



- **Descriptions of Behaviors:**

- “They were stooped behind the air conditioning unit licking the pipes when I arrived.”



- **Physical Descriptions:**

- “It was about 100 degrees out and they were wearing two jackets, a hoodie, and long johns.”

# Conditions Outside of Mental Illness

# Mental Illness Does Not Include:



## Title 43A O.S. § 1-103 – Definitions

- 5. c. Unless a person also meets the criteria established in subparagraph a or b of this paragraph, “person requiring treatment” or an “assisted outpatient” shall not mean
  - 1) A person whose mental processes have been weakened or impacted by reasons of advanced years, dementia, or Alzheimer’s disease,
  - 2) A person with intellectual or developmental disability as defined in Title 10 of the Oklahoma Statutes,
  - 3) A person with a seizure disorder
  - 4) A person with a traumatic brain injury, or
  - 5) A person who is homeless

[43A O.S. § 1-103 – Definitions](#)

# Emergency Detention Stages

# Emergency Detention Stages



## STAGE 1 PROTECTIVE CUSTODY



- 1** Prepares a peace officer statement or obtains 3<sup>rd</sup> party statement.
- 2** Immediately transports nearest facility designated by ODMHSAS Commissioner to conduct evaluations.

# Emergency Detention Stages



## STAGE 2 Emergency Detention



### Title 43A O.S. § 1-103 – Definitions

#### 3. Emergency Detention

the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty **(120) hours or five (5) days**, excluding weekends and holidays, except upon a court order authorizing detention beyond this period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by this act.

# Initial Assessment



## Title 43A O.S. § 5-208 – Examination of Persons in Protective Custody

- *Must occur within 12 hours of protective custody*
- *Performed by an LMHP*
- *If determined the person does not meet criteria, the officer must immediately return the individual to the point taken into custody, or a safe place, home or residence, if original location is not safe.*

[43A O.S. § 5-208 - Examination of Person in Protective Custody](#)

# Licensed Mental Health Professional (LMHP)



- Psychiatrist
- Physician w/specific mental health training
- Psychologist
- Licensed Professional Counselor
- Licensed Clinical Social Worker
- Licensed Marital & Family Therapist
- Licensed Behavioral Practitioner
- APRN specializing in mental health
- Physicians Assistant
- Licensed Alcohol and Drug Counselor/Mental Health



# During Emergency Detention



## Title 43A O.S. § 5-508 – Examination of Person in Protective Custody

- An evaluation will be completed by 2 LMHP's
- If further treatment is not needed, the individual is to be released before or at the end of the 120-hour period
- Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the person has refused to consent to voluntary treatment,....a LMHP, or appointee, shall immediately file a petition or request the district attorney to file a petition with the district court provided by [Section 5-410](#) of this title...(this is a court order)

[43A O.S. § 5-208 - Examination of Person in Protective Custody](#)

# Mental Health Evaluation (After 120 Hours)



## Title 43A O.S. § 5-414 – Mental Health Evaluation

To detain an individual past the 120 hours

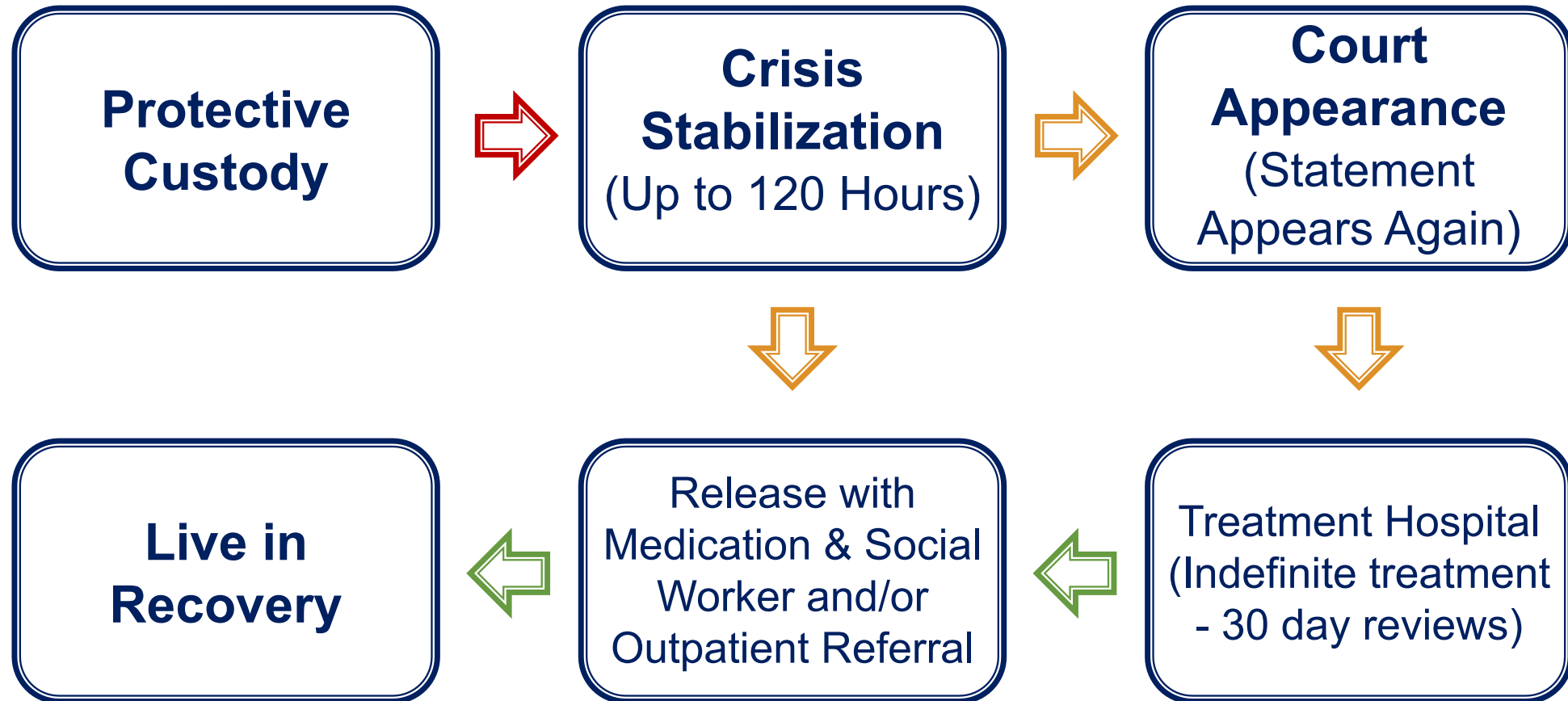
- **Must have Following Findings:**

- Whether person is a “person requiring treatment;”
- Whether person is likely to benefit from treatment;
  - **Remember, Crisis services do not = Treatment**
- Whether inpatient treatment is least restrictive treatment necessary.

**(Verses outpatient treatment)**

[43A O.S. § 5-414 - Mental Health Evaluation](#)

# Emergency Detention Process



# Persons not Eligible for ED



- Not meeting inpatient criteria (LMHP).
- Not Medically stable.
  - [Title 43A: 5-207 E.](#) A treating physician may authorize that the person be detained until the person becomes medically stable. 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 by an appropriate law enforcement agency.
- Confined to a jail or 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.

# Qualified Immunity



## 10<sup>th</sup> Circuit Court of Appeals: Perea v. Baca 2016

- Subject's mother called because son had taken “very bad drugs” and mom was afraid of what son might do. Officers found Perea riding a bicycle. They forced him into a parking lot and chased him on foot. Perea was holding a crucifix and one of the officers told the other to use the taser. Perea was tasered several times and died.
  - Court looked at the immediate threat to officers and others vs. the threat to oneself
  - Was he actively resisting arrest vs. evading by flight
  - Was the severity of “crime” being committed sufficient for the force used
- The US Supreme Court held qualified immunity DID NOT apply in this case

# Officer's Safety

# Officer Safety/Rights



## Safety

Do not be fooled:

- Juveniles
- Smaller Stature

Transports

Parents, Family, Significant Others



## Rights

Juveniles don't lose rights

Adults only after crisis stabilization

Take care of yourselves!!!

Fool me once,  
**STRIKE ONE**

Fool me twice,  
**STRIKE THREE**







CRISIS INTERVENTION TEAM

# QUESTIONS?

# Thank You!