

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1041

By: Boggs

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5
6 AS INTRODUCED

7 An Act relating to verdicts; amending 22 O.S. 2011,
8 Sections 914, 925 and 1161, which relate to form,
9 claims of insanity and acquittal; modifying reference
10 to certain verdict; and providing an effective date.

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

12 SECTION 1. AMENDATORY 22 O.S. 2011, Section 914, is
13 amended to read as follows:

14 Section 914. A general verdict upon a plea of not guilty, is
15 either "guilty", or "not guilty", which imports a conviction or
16 acquittal of the offense charged. Upon a plea of a former
17 conviction or acquittal of the same offense, it is either "for the
18 state", or "for the defendant". When the defendant is acquitted on
19 the ground that he was insane at the time of the commission of the
20 act charged, the verdict must be "~~not guilty by reason of insanity~~"
21 "guilty but insane". When the defendant is acquitted on the ground
22 of variance between the charge and the proof, the verdict must be
23 "not guilty by reason of variance between charge and proof".
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1 SECTION 2. AMENDATORY 22 O.S. 2011, Section 925, is
2 amended to read as follows:

3 Section 925. When it is contended on behalf of the defendant in
4 any criminal prosecution that such defendant is at the time of the
5 trial a person who is impaired by reason of mental retardation, a
6 mentally ill person, an insane person, or a person of unsound mind,
7 the court shall submit to the jury a proper form of verdict, and if
8 the jury finds the defendant ~~not guilty on account of such insanity,~~
9 ~~mental illness, or unsoundness of mind~~ but insane, they shall so
10 state in their verdict, and the court shall thereupon order the
11 defendant committed to the state hospital for the mentally ill, or
12 other state institution provided for the care and treatment of cases
13 such as the one before the court, until the sanity and soundness of
14 mind of the defendant be judicially determined, and such person be
15 discharged from the institution according to law.

16 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1161, is
17 amended to read as follows:

18 Section 1161. A. 1. An act committed by a person in a state
19 of insanity cannot be punished as a public offense, ~~nor can the;~~
20 provided, however, upon finding that a crime was committed by a
21 person in a state of insanity, such verdict shall state that the
22 person is "guilty but insane". A person shall not be tried,
23 sentenced to punishment, or punished for a public offense while such
24 person is insane.

1 2. When in any criminal action by indictment or information,
2 the defense of insanity is raised, but the defendant is not
3 acquitted on the ground that the defendant was insane at the time of
4 the commission of the crime charged, an issue concerning such
5 defense may be raised on appeal. If the appellate court finds
6 relief is required, the appellate court shall not have authority to
7 modify the judgment or sentence, but will only have the authority to
8 order a new trial or order resentencing without recommendations to
9 sentencing.

10 3. When in any criminal action by indictment or information the
11 defense of insanity is interposed either singly or in conjunction
12 with some other defense, the jury shall state in the verdict, if it
13 is one of acquittal, whether ~~or not~~ the defendant is acquitted on
14 the ground of insanity, but such verdict shall state that the
15 defendant is "guilty but insane". When the defendant is acquitted
16 on the ground that the defendant was insane at the time of the
17 commission of the crime charged, the person shall not be discharged
18 from custody until the court has made a determination that the
19 person is not presently dangerous to the public peace and safety
20 because the person is a person requiring treatment as defined in
21 Section 1-103 of Title 43A of the Oklahoma Statutes.

22 B. 1. To assist the court in its determination, the court
23 shall immediately issue an order for the person to be examined by
24 the Department of Mental Health and Substance Abuse Services at a

1 facility the Department has designated to examine and treat forensic
2 individuals. Upon the issuance of the order, the sheriff shall
3 deliver the person to the designated facility.

4 2. Within forty-five (45) days of the court entering such an
5 order, a hearing shall be conducted by the court to ascertain
6 whether the person is presently dangerous to the public peace or
7 safety because the person is a person requiring treatment as defined
8 in Section 1-103 of Title 43A of the Oklahoma Statutes or, if not,
9 is in need of continued supervision as a result of unresolved
10 symptoms of mental illness or a history of treatment noncompliance.
11 During the required period of hospitalization the Department of
12 Mental Health and Substance Abuse Services shall have the person
13 examined by two qualified psychiatrists or one such psychiatrist and
14 one qualified clinical psychologist whose training and experience
15 enable the professional to form expert opinions regarding mental
16 illness, competency, dangerousness and criminal responsibility.

17 C. 1. Each examiner shall, within thirty-five (35) days of
18 hospitalization, individually prepare and submit to the court, the
19 district attorney and the person's trial counsel a report of the
20 person's psychiatric examination findings and an evaluation
21 concerning whether the person is presently dangerous to the public
22 peace or safety.

23 2. If the court is dissatisfied with the reports or if a
24 disagreement on the issue of mental illness and dangerousness exists

1 between the two examiners, the court may designate one or more
2 additional examiners and have them submit their findings and
3 evaluations as specified in paragraph 1 of this subsection.

4 3. a. Within ten (10) days after the reports are filed, the
5 court must conduct a hearing to determine the person's
6 present condition as to the issue of whether:

7 (1) the person is presently dangerous to the public
8 peace or safety because the person is a person
9 requiring treatment as defined in Section 1-103
10 of Title 43A of the Oklahoma Statutes, or

11 (2) if not believed to be presently dangerous to the
12 public peace or safety, the person is in need of
13 continued supervision as a result of unresolved
14 symptoms of mental illness or a history of
15 treatment noncompliance.

16 b. The district attorney must establish the foregoing by
17 a preponderance of the evidence. At this hearing the
18 person shall have the assistance of counsel and may
19 present independent evidence.

20 D. 1. If the court finds that the person is not presently
21 dangerous to the public peace or safety because the person is a
22 person requiring treatment as defined in Section 1-103 of Title 43A
23 of the Oklahoma Statutes and is not in need of continued supervision
24 as a result of unresolved symptoms of mental illness or a history of

1 treatment noncompliance, it shall immediately discharge the person
2 from hospitalization.

3 2. If the court finds that the person is presently dangerous to
4 the public peace and safety, it shall commit the person to the
5 custody of the Department of Mental Health and Substance Abuse
6 Services. The person shall then be subject to discharge pursuant to
7 the procedure set forth in Title 43A of the Oklahoma Statutes.

8 a. During the period of hospitalization, the Department
9 of Mental Health and Substance Abuse Services may
10 administer or cause to be administered to the person
11 such psychiatric, medical or other therapeutic
12 treatment as in its judgment should be administered.

13 b. The person shall be subject to discharge or
14 conditional release pursuant to the procedures set
15 forth in this section.

16 E. If at any time the court finds the person is not presently
17 dangerous to the public peace or safety because the person is a
18 person requiring treatment pursuant to the provisions of Section 1-
19 103 of Title 43A of the Oklahoma Statutes, but is in need of
20 continued supervision as a result of unresolved symptoms of mental
21 illness or a history of treatment noncompliance, the court may:

22 1. Discharge the person pursuant to the procedure set forth in
23 Title 43A of the Oklahoma Statutes;

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1 2. Discharge the person, and upon the court's or the district
2 attorney's motion commence civil involuntary commitment proceedings
3 against the person pursuant to the provisions of Title 43A of the
4 Oklahoma Statutes; or

5 3. Order conditional release, as set forth in subsection F of
6 this section.

7 F. There is hereby created a Forensic Review Board to be
8 composed of seven (7) members appointed by the Governor with the
9 advice and consent of the Senate. The Board members shall serve for
10 a term of five (5) years except that for members first appointed to
11 the Board: one shall serve for a term ending December 31, 2008, two
12 shall serve for a term ending December 31, 2009, two shall serve a
13 term ending December 31, 2010, and two shall serve for a term ending
14 December 31, 2011.

15 1. The Board shall be composed of:

- 16 a. four licensed mental health professionals with
17 experience in treating mental illness, at least one of
18 whom is licensed as a Doctor of Medicine, a Doctor of
19 Osteopathy, or a licensed clinical psychologist and
20 shall be appointed from a list of seven names
21 submitted to the Governor by the Department of Mental
22 Health and Substance Abuse Services,
23 b. one member who shall be an attorney licensed to
24 practice in this state and shall be appointed from a

1 list of not less than three names submitted to the
2 Governor by the Board of Governors of the Oklahoma Bar
3 Association,

4 c. one member who shall be a retired judge licensed to
5 practice in this state and shall be appointed from a
6 list of not less than three names submitted to the
7 Governor by the Judicial Nominating Committee, and

8 d. one at-large member.

9 The attorney and retired judge members of the Board shall be
10 prohibited from representing in the courts of this state persons
11 charged with felony offenses while serving on the Board.

12 2. The Board shall meet as necessary to determine which
13 individuals confined with the Department of Mental Health and
14 Substance Abuse Services are eligible for therapeutic visits,
15 conditional release or discharge and whether the Board wishes to
16 make such a recommendation to the court of the county where the
17 individual was found ~~not guilty by reason of insanity~~ but insane.

18 a. Forensic Review Board meetings shall not be considered
19 subject to the Oklahoma Open Meeting Act and are not
20 open to the public. Other than the Forensic Review
21 Board members, only the following individuals shall be
22 permitted to attend Board meetings:

23 (1) the individual the Board is considering for
24 therapeutic visits, conditional release or

1 discharge, his or her treatment advocate, and
2 members of his or her treatment team,

3 (2) the Commissioner of Mental Health and Substance
4 Abuse Services or designee,

5 (3) the Advocate General for the Department of Mental
6 Health and Substance Abuse Services or designee,

7 (4) the General Counsel for the Department of Mental
8 Health and Substance Abuse Services or designee,

9 and

10 (5) any other persons the Board and Commissioner of
11 Mental Health and Substance Abuse Services wish
12 to be present.

13 b. The Department of Mental Health and Substance Abuse
14 Services shall provide administrative staff to the
15 Board to take minutes of meetings and prepare
16 necessary documents and correspondence for the Board
17 to comply with its duties as set forth in this
18 section. The Department of Mental Health and
19 Substance Abuse Services shall also transport the
20 individuals being reviewed to and from the Board
21 meeting site.

22 c. The Board shall promulgate rules concerning the
23 granting and structure of therapeutic visits,
24 conditional releases and discharge.

1 d. For purposes of this subsection, "therapeutic visit"
2 means a scheduled time period off campus which
3 provides for progressive tests of the consumer's
4 ability to maintain and demonstrate coping skills.

5 3. The Forensic Review Board shall submit any recommendation
6 for therapeutic visit, conditional release or discharge to the court
7 and district attorney of the county where the person was found ~~not~~
8 guilty ~~by reason of insanity~~ but insane, the person's trial counsel,
9 the Department of Mental Health and Substance Abuse Services and the
10 person at least fourteen (14) days prior to the scheduled visit.

11 a. The district attorney may file an objection to a
12 recommendation for a therapeutic visit within ten (10)
13 days of receipt of the notice.

14 b. If an objection is filed, the therapeutic visit is
15 stayed until a hearing is held. The court shall hold
16 a hearing not less than ten (10) days following an
17 objection to determine whether the therapeutic visit
18 is necessary for treatment, and if necessary, the
19 nature and extent of the visit.

20 4. During the period of hospitalization the Department of
21 Mental Health and Substance Abuse Services shall submit an annual
22 report on the status of the person to the court, the district
23 attorney and the patient advocate general of the Department of
24 Mental Health and Substance Abuse Services.

1 G. Upon motion by the district attorney or upon a
2 recommendation for conditional release or discharge by the Forensic
3 Review Board, the court shall conduct a hearing to ascertain if the
4 person is presently dangerous and a person requiring treatment as
5 defined in Section 1-103 of Title 43A of the Oklahoma Statutes.
6 This hearing shall be conducted under the same procedure as the
7 first hearing and must occur not less than ten (10) days following
8 the motion or request by the Forensic Review Board.

9 1. If the court determines that the person continues to be
10 presently dangerous to the public peace and safety because the
11 person is a person requiring treatment as defined in Section 1-103
12 of Title 43A of the Oklahoma Statutes, it shall order the return of
13 the person to the hospital for additional treatment.

14 2. If the court determines that the person is not dangerous
15 subject to certain conditions, the court may conditionally release
16 the person subject to the following:

17 a. the Forensic Review Board has made a recommendation
18 for conditional release, including a written plan for
19 outpatient treatment and a list of recommendations for
20 the court to place as conditions on the release,

21 b. in its order of conditional release, the court shall
22 specify conditions of release and shall direct the
23 appropriate agencies or persons to submit annual
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- 1 reports regarding the person's compliance with the
2 conditions of release and progress in treatment,
- 3 c. the person must agree, in writing, that during the
4 period the person is granted conditional release and
5 is subject to the provisions thereof, there shall be
6 free transmission of all pertinent information,
7 including clinical information regarding the person,
8 among the Department of Mental Health and Substance
9 Abuse Services, the appropriate community mental
10 health centers and the appropriate district attorneys,
11 law enforcement and court personnel,
- 12 d. the court's order placing the person on conditional
13 release shall include notice that the person's
14 conditional release may be revoked upon good cause.
15 The person placed on conditional release shall remain
16 under the supervision of the Department of Mental
17 Health and Substance Abuse Services until the
18 committing court enters a final discharge order. The
19 Department of Mental Health and Substance Abuse
20 Services shall assess the person placed on conditional
21 release annually and shall have the authority to
22 recommend discharge of the person to the Board,
- 23 e. any agency or individual involved in providing
24 treatment with regard to the person's conditional

1 release plan may prepare and file an affidavit under
2 oath if the agency or individual believes that the
3 person has failed to comply with the conditions of
4 release or that such person has progressed to the
5 point that inpatient care is appropriate.

6 (1) Any peace officer who receives such an affidavit
7 shall take the person into protective custody and
8 return the person to the forensic unit of the
9 state hospital.

10 (2) A hearing shall be conducted within three (3)
11 days, excluding holidays and weekends, after the
12 person is returned to the forensic unit of the
13 state hospital to determine if the person has
14 violated the conditions of release, or if full-
15 time hospitalization is the least restrictive
16 alternative consistent with the person's needs
17 and the need for public safety. Notice of the
18 hearing shall be issued, at least twenty-four
19 (24) hours before the hearing, to the hospital
20 superintendent, the person, trial counsel for the
21 person, and the patient advocate general of the
22 Department of Mental Health and Substance Abuse
23 Services. If the person requires hospitalization
24 because of a violation of the conditions of

1 release or because of progression to the point
2 that inpatient care is appropriate, the court may
3 then modify the conditions of release.

4 3. If the court determines that the person is not presently
5 dangerous to the public peace or safety because the person is not a
6 person requiring treatment, it shall order that the person be
7 discharged from the custody of the Department of Mental Health and
8 Substance Abuse Services.

9 SECTION 4. This act shall become effective November 1, 2016.

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