

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1214

By: Sharp and Holt of the
Senate

and

Wood of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to verdicts; amending 22 O.S. 2011,
11 Section 1161, which relates to acquittal on grounds
12 of insanity; modifying forms of adjudication of
13 certain persons; authorizing imposition of certain
14 sentences for specified defendants; establishing
15 requirements for probation of certain defendants;
16 establishing certain reporting requirements;
17 modifying statutory references; defining terms; and
18 providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 1161, is
amended to read as follows:

Section 1161. A. 1. An act committed by a person in a state
~~of insanity cannot be punished as a public offense, nor can the~~
~~person be tried, sentenced to punishment, or punished for a public~~
~~offense while such person is insane~~ mental illness or mental defect

1 shall be adjudicated as guilty with mental defect or as not guilty
2 by reason of mental illness.

3 2. If a person is found guilty with mental defect or enters
4 such plea which is accepted by the court, the court at the time of
5 sentencing shall impose any sentence that could be imposed by law
6 upon a person who is convicted of the same offense, and the person
7 shall serve the sentence in custody of a county jail or the Oklahoma
8 Department of Corrections.

9 3. If a person who is found guilty with mental defect is placed
10 on probation under the jurisdiction of the sentencing court as
11 provided by law, the court shall immediately issue an order for the
12 person to be examined by the Department of Mental Health and
13 Substance Abuse Services at a facility the Department has designated
14 to examine and treat forensic individuals. Upon issuance of the
15 order, the sheriff shall deliver the person to the designated
16 facility. Within forty-five (45) days, the Department shall provide
17 to the court a recommendation of treatment for the person, which
18 shall be made a condition of probation. Reports as specified by the
19 trial judge shall be filed with the probation officer and the
20 sentencing court. Failure to continue treatment, except by
21 agreement with the treating agency and the sentencing court, is
22 grounds for revocation of probation. Treatment shall be provided by
23 an agency of the Department or, with the approval of the sentencing
24 court and at the person's expense, by private agencies, private

1 physicians or other mental health personnel. A psychiatric report
2 shall be filed with the probation officer and the sentencing court
3 every six (6) months during the period of probation.

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

13 ~~3.~~ 5. When in any criminal action by indictment or information
14 the defense of ~~insanity~~ mental illness is interposed either singly
15 or in conjunction with some other defense, the jury shall state in
16 the verdict, if it is one of acquittal, whether or not the defendant
17 is acquitted on the ground of ~~insanity~~ mental illness. When the
18 defendant is acquitted on the ground that the defendant was ~~insane~~
19 mentally ill at the time of the commission of the crime charged, the
20 person shall not be discharged from custody until the court has made
21 a determination that the person is not ~~presently~~ dangerous to the
22 public peace and safety ~~because the person~~ and is a person requiring
23 treatment ~~as defined in Section 1-103 of Title 43A of the Oklahoma~~
24 ~~Statutes.~~

1 B. 1. To assist the court in its determination, the court
2 shall immediately issue an order for the person to be examined by
3 the Department of Mental Health and Substance Abuse Services at a
4 facility the Department has designated to examine and treat forensic
5 individuals. Upon the issuance of the order, the sheriff shall
6 deliver the person to the designated facility.

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

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

3 2. If the court is dissatisfied with the reports or if a
4 disagreement on the issue of mental illness and dangerousness exists
5 between the two examiners, the court may designate one or more
6 additional examiners and have them submit their findings and
7 evaluations as specified in paragraph 1 of this subsection.

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

11 (1) the person is ~~presently~~ dangerous to the public
12 peace or safety because the person is a person
13 requiring treatment ~~as defined in Section 1-103~~
14 ~~of Title 43A of the Oklahoma Statutes~~, or

15 (2) if not believed to be ~~presently~~ dangerous to the
16 public peace or safety, the person is in need of
17 continued supervision as a result of unresolved
18 symptoms of mental illness or a history of
19 treatment noncompliance.

20 b. The district attorney must establish the foregoing by
21 a preponderance of the evidence. At this hearing the
22 person shall have the assistance of counsel and may
23 present independent evidence.
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1 D. 1. If the court finds that the person is not presently
2 dangerous to the public peace or safety because the person is a
3 person requiring treatment ~~as defined in Section 1-103 of Title 43A~~
4 ~~of the Oklahoma Statutes~~ and is not in need of continued supervision
5 as a result of unresolved symptoms of mental illness or a history of
6 treatment noncompliance, it shall immediately discharge the person
7 from hospitalization.

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

13 a. During the period of hospitalization, the Department
14 of Mental Health and Substance Abuse Services may
15 administer or cause to be administered to the person
16 such psychiatric, medical or other therapeutic
17 treatment as in its judgment should be administered.

18 b. The person shall be subject to discharge or
19 conditional release pursuant to the procedures set
20 forth in this section.

21 E. If at any time the court finds the person is not presently
22 dangerous to the public peace or safety because the person is a
23 person requiring treatment ~~pursuant to the provisions of Section 1-~~
24 ~~103 of Title 43A of the Oklahoma Statutes~~, but is in need of

1 continued supervision as a result of unresolved symptoms of mental
2 illness or a history of treatment noncompliance, the court may:

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

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

9 3. Order conditional release, as set forth in subsection F of
10 this section.

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

19 1. The Board shall be composed of:

20 a. four licensed mental health professionals with
21 experience in treating mental illness, at least one of
22 whom is licensed as a Doctor of Medicine, a Doctor of
23 Osteopathy, or a licensed clinical psychologist and
24 shall be appointed from a list of seven names

1 submitted to the Governor by the Department of Mental
2 Health and Substance Abuse Services,

3 b. one member who shall be an attorney licensed to
4 practice in this state and shall be appointed from a
5 list of not less than three names submitted to the
6 Governor by the Board of Governors of the Oklahoma Bar
7 Association,

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

12 d. one at-large member.

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

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

22 a. Forensic Review Board meetings shall not be considered
23 subject to the Oklahoma Open Meeting Act and are not
24 open to the public. Other than the Forensic Review

1 Board members, only the following individuals shall be
2 permitted to attend Board meetings:

- 3 (1) the individual the Board is considering for
4 therapeutic visits, conditional release or
5 discharge, his or her treatment advocate, and
6 members of his or her treatment team,
- 7 (2) the Commissioner of Mental Health and Substance
8 Abuse Services or designee,
- 9 (3) the Advocate General for the Department of Mental
10 Health and Substance Abuse Services or designee,
- 11 (4) the General Counsel for the Department of Mental
12 Health and Substance Abuse Services or designee,
13 and
- 14 (5) any other persons the Board and Commissioner of
15 Mental Health and Substance Abuse Services wish
16 to be present.

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

3 c. The Board shall promulgate rules concerning the
4 granting and structure of therapeutic visits,
5 conditional releases and discharge.

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

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

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

20 b. If an objection is filed, the therapeutic visit is
21 stayed until a hearing is held. The court shall hold
22 a hearing not less than ten (10) days following an
23 objection to determine whether the therapeutic visit
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1 is necessary for treatment, and if necessary, the
2 nature and extent of the visit.

3 4. During the period of hospitalization the Department of
4 Mental Health and Substance Abuse Services shall submit an annual
5 report on the status of the person to the court, the district
6 attorney and the patient advocate general of the Department of
7 Mental Health and Substance Abuse Services.

8 G. Upon motion by the district attorney or upon a
9 recommendation for conditional release or discharge by the Forensic
10 Review Board, the court shall conduct a hearing to ascertain if the
11 person is ~~presently~~ dangerous and a person requiring treatment ~~as~~
12 ~~defined in Section 1-103 of Title 43A of the Oklahoma Statutes.~~

13 This hearing shall be conducted under the same procedure as the
14 first hearing and must occur not less than ten (10) days following
15 the motion or request by the Forensic Review Board.

16 1. If the court determines that the person continues to be
17 ~~presently~~ dangerous to the public peace and safety because the
18 person is a person requiring treatment ~~as defined in Section 1-103~~
19 ~~of Title 43A of the Oklahoma Statutes,~~ it shall order the return of
20 the person to the hospital for additional treatment.

21 2. If the court determines that the person is not dangerous but
22 subject to certain conditions, the court may conditionally release
23 the person subject to the following:
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- 1 a. the Forensic Review Board has made a recommendation
2 for conditional release, including a written plan for
3 outpatient treatment and a list of recommendations for
4 the court to place as conditions on the release,
- 5 b. in its order of conditional release, the court shall
6 specify conditions of release and shall direct the
7 appropriate agencies or persons to submit annual
8 reports regarding the person's compliance with the
9 conditions of release and progress in treatment,
- 10 c. the person must agree, in writing, that during the
11 period the person is granted conditional release and
12 is subject to the provisions thereof, there shall be
13 free transmission of all pertinent information,
14 including clinical information regarding the person,
15 among the Department of Mental Health and Substance
16 Abuse Services, the appropriate community mental
17 health centers and the appropriate district attorneys,
18 law enforcement and court personnel,
- 19 d. the court's order placing the person on conditional
20 release shall include notice that the person's
21 conditional release may be revoked upon good cause.
22 The person placed on conditional release shall remain
23 under the supervision of the Department of Mental
24 Health and Substance Abuse Services until the

1 committing court enters a final discharge order. The
2 Department of Mental Health and Substance Abuse
3 Services shall assess the person placed on conditional
4 release annually and shall have the authority to
5 recommend discharge of the person to the Board, and
6 e. any agency or individual involved in providing
7 treatment with regard to the person's conditional
8 release plan may prepare and file an affidavit under
9 oath if the agency or individual believes that the
10 person has failed to comply with the conditions of
11 release or that such person has progressed to the
12 point that inpatient care is appropriate.

13 (1) Any peace officer who receives such an affidavit
14 shall take the person into protective custody and
15 return the person to the forensic unit of the
16 state hospital.

17 (2) A hearing shall be conducted within three (3)
18 days, excluding holidays and weekends, after the
19 person is returned to the forensic unit of the
20 state hospital to determine if the person has
21 violated the conditions of release, or if full-
22 time hospitalization is the least restrictive
23 alternative consistent with the person's needs
24 and the need for public safety. Notice of the

1 hearing shall be issued, at least twenty-four
2 (24) hours before the hearing, to the hospital
3 superintendent, the person, trial counsel for the
4 person, and the patient advocate general of the
5 Department of Mental Health and Substance Abuse
6 Services. If the person requires hospitalization
7 because of a violation of the conditions of
8 release or because of progression to the point
9 that inpatient care is appropriate, the court may
10 then modify the conditions of release.

11 3. If the court determines that the person is not ~~presently~~
12 dangerous to the public peace or safety because the person is not a
13 person requiring treatment, it shall order that the person be
14 discharged from the custody of the Department of Mental Health and
15 Substance Abuse Services.

16 H. As used in this section:

17 1. "Antisocial personality disorder" means antisocial
18 personality disorder as defined by the Diagnostic and Statistical
19 Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent
20 editions;

21 2. "Dangerous" means a person who because of mental illness
22 poses a substantial risk of physical harm in the near future to
23 another person or persons. Dangerousness shall be determined by
24 such factors as whether the person has placed another person or

1 persons in a reasonable fear of violent behavior, and medication and
2 treatment compliance;

3 3. "Guilty with mental defect" means the person committed the
4 act and was either unable to understand the nature and consequences
5 of his or her actions or was unable to differentiate right from
6 wrong, and has been diagnosed with antisocial personality disorder
7 which substantially contributed to the act for which the person has
8 been charged;

9 4. "Mental defect" means the person has been diagnosed with
10 antisocial personality disorder which substantially contributed to
11 the act for which the person has been charged;

12 5. "Mental illness" means a substantial disorder of thought,
13 mood, perception, psychological orientation or memory that
14 significantly impairs judgment, behavior, capacity to recognize
15 reality or ability to meet the ordinary demands of life;

16 6. "Not guilty by reason of mental illness" means the person
17 committed the act while mentally ill, and was either unable to
18 understand the nature and consequences of his or her actions or was
19 unable to differentiate right from wrong, and has not been diagnosed
20 with antisocial personality disorder; and

21 7. a. "Person requiring treatment" means a person who because
22 of mental illness:

23 (1) poses a substantial risk of physical harm to self
24 as manifested by evidence or serious threats of

1 or attempts at suicide or other significant self-
2 inflicted bodily harm,

3 (2) poses a substantial risk of physical harm to
4 another person or persons as manifested by
5 evidence of violent behavior directed toward
6 another person or persons,

7 (3) has placed another person or persons in
8 reasonable fear of serious physical harm or
9 violent behavior directed towards such person or
10 persons as manifested by serious and immediate
11 threats,

12 (4) is in a condition of severe deterioration such
13 that, without immediate intervention, there
14 exists a substantial risk that severe impairment
15 or injury will result to the person, or

16 (5) poses a substantial risk of serious physical
17 injury to self or death as manifested by evidence
18 that the person is unable to provide for and is
19 not providing for his or her basic physical
20 needs.

21 b. The mental health or substance abuse history of the
22 person may be used as part of the evidence to
23 determine whether the person is a person requiring
24 treatment. The mental health or substance abuse

1 history of the person shall not be the sole basis for
2 this determination.

3 c. Unless a person also meets the criteria established in
4 subparagraph a of this paragraph, "person requiring
5 treatment" shall not mean:

6 (1) a person whose mental processes have been
7 weakened or impaired by reason of advanced years,
8 dementia or Alzheimer's disease,

9 (2) a mentally retarded or developmentally disabled
10 person as defined in Title 10 of the Oklahoma
11 Statutes,

12 (3) a person with seizure disorder, or

13 (4) a person with a traumatic brain injury.

14 SECTION 2. This act shall become effective November 1, 2016.

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16 55-2-3046 TEK 2/16/2016 10:06:52 AM