

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 55th Legislature (2015)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1114

By: Hoskin of the House

and

Sparks of the Senate

7
8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to criminal procedure; amending 22
12 O.S. 2011, Section 1161, which relates to acts of
13 insane persons; defining term; and providing an
14 effective date.

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

16 SECTION 1. 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 person be tried, sentenced to punishment, or punished for a public
21 offense while such person is insane.

22 2. When in any criminal action by indictment or information,
23 the defense of insanity is raised, but the defendant is not
24 acquitted on the ground that the defendant was insane at the time of

1 the commission of the crime charged, an issue concerning such
2 defense may be raised on appeal. If the appellate court finds
3 relief is required, the appellate court shall not have authority to
4 modify the judgment or sentence, but will only have the authority to
5 order a new trial or order resentencing without recommendations to
6 sentencing.

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

18 B. 1. To assist the court in its determination, the court
19 shall immediately issue an order for the person to be examined by
20 the Department of Mental Health and Substance Abuse Services at a
21 facility the Department has designated to examine and treat forensic
22 individuals. Upon the issuance of the order, the sheriff shall
23 deliver the person to the designated facility.

24

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

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

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

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

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

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

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

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

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

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

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

13 1. The Board shall be composed of:

14 a. four licensed mental health professionals with
15 experience in treating mental illness, at least one of
16 whom is licensed as a Doctor of Medicine, a Doctor of
17 Osteopathy, or a licensed clinical psychologist and
18 shall be appointed from a list of seven names
19 submitted to the Governor by the Department of Mental
20 Health and Substance Abuse Services,

21 b. one member who shall be an attorney licensed to
22 practice in this state and shall be appointed from a
23 list of not less than three names submitted to the
24

1 Governor by the Board of Governors of the Oklahoma Bar
2 Association,

3 c. one member who shall be a retired judge 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 Judicial Nominating Committee, and

7 d. one at-large member.

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

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

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

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

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 of the consumer to maintain and demonstrate
5 coping skills.

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

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

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

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

1 attorney and the patient advocate general of the Department of
2 Mental Health and Substance Abuse Services.

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

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

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

- 19 a. the Forensic Review Board has made a recommendation
20 for conditional release, including a written plan for
21 outpatient treatment and a list of recommendations for
22 the court to place as conditions on the release,
23 b. in its order of conditional release, the court shall
24 specify conditions of release and shall direct the

1 appropriate agencies or persons to submit annual
2 reports regarding the ~~person's~~ compliance of the
3 person with the conditions of release and progress in
4 treatment,

5 c. the person must agree, in writing, that during the
6 period the person is granted conditional release and
7 is subject to the provisions thereof, there shall be
8 free transmission of all pertinent information,
9 including clinical information regarding the person,
10 among the Department of Mental Health and Substance
11 Abuse Services, the appropriate community mental
12 health centers and the appropriate district attorneys,
13 law enforcement and court personnel,

14 d. the ~~court's~~ order of the court placing the person on
15 conditional release shall include notice that the
16 ~~person's~~ conditional release of the person may be
17 revoked upon good cause. The person placed on
18 conditional release shall remain under the supervision
19 of the Department of Mental Health and Substance Abuse
20 Services until the committing court enters a final
21 discharge order. The Department of Mental Health and
22 Substance Abuse Services shall assess the person
23 placed on conditional release annually and shall have
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1 the authority to recommend discharge of the person to
2 the Board,

3 e. any agency or individual involved in providing
4 treatment with regard to the ~~person's~~ conditional
5 release plan of the person may prepare and file an
6 affidavit under oath if the agency or individual
7 believes that the person has failed to comply with the
8 conditions of release or that such person has
9 progressed to the point that inpatient care is
10 appropriate.

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

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

23 Notice of the hearing shall be issued, at least
24 twenty-four (24) hours before the hearing, to the

1 hospital superintendent, the person, trial
2 counsel for the person, and the patient advocate
3 general of the Department of Mental Health and
4 Substance Abuse Services. If the person requires
5 hospitalization because of a violation of the
6 conditions of release or because of progression
7 to the point that inpatient care is appropriate,
8 the court may then modify the conditions of
9 release.

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

15 H. As used in this section, "court" shall mean the court that
16 made the original determination that the person was insane.

17 SECTION 2. This act shall become effective November 1, 2015.

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND CIVIL PROCEDURE,
20 dated 02/11/2015 - DO PASS, As Amended and Coauthored.