

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 HOUSE BILL 1114

By: Hoskin

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Section 1161, which relates to acts of
9 insane persons; defining term; and providing an
10 effective date.

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

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

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

18 2. When in any criminal action by indictment or information,
19 the defense of insanity is raised, but the defendant is not
20 acquitted on the ground that the defendant was insane at the time of
21 the commission of the crime charged, an issue concerning such
22 defense may be raised on appeal. If the appellate court finds
23 relief is required, the appellate court shall not have authority to
24 modify the judgment or sentence, but will only have the authority to

1 order a new trial or order resentencing without recommendations to
2 sentencing.

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

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

20 2. Within forty-five (45) days of the court entering such an
21 order, a hearing shall be conducted by the court to ascertain
22 whether the person is presently dangerous to the public peace or
23 safety because the person is a person requiring treatment as defined
24 in Section 1-103 of Title 43A of the Oklahoma Statutes or, if not,

1 is in need of continued supervision as a result of unresolved
2 symptoms of mental illness or a history of treatment noncompliance.
3 During the required period of hospitalization the Department of
4 Mental Health and Substance Abuse Services shall have the person
5 examined by two qualified psychiatrists or one such psychiatrist and
6 one qualified clinical psychologist whose training and experience
7 enable the professional to form expert opinions regarding mental
8 illness, competency, dangerousness and criminal responsibility.

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

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

20 3. a. Within ten (10) days after the reports are filed, the
21 court must conduct a hearing to determine the ~~person's~~
22 present condition of the person as to the issue of
23 whether:
24

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

5 (2) if not believed to be presently dangerous to the
6 public peace or safety, the person is in need of
7 continued supervision as a result of unresolved
8 symptoms of mental illness or a history of
9 treatment noncompliance.

10 b. The district attorney must establish the foregoing by
11 a preponderance of the evidence. At this hearing the
12 person shall have the assistance of counsel and may
13 present independent evidence.

14 D. 1. If the court finds that the person is not presently
15 dangerous to the public peace or safety because the person is a
16 person requiring treatment as defined in Section 1-103 of Title 43A
17 of the Oklahoma Statutes and is not in need of continued supervision
18 as a result of unresolved symptoms of mental illness or a history of
19 treatment noncompliance, it shall immediately discharge the person
20 from hospitalization.

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

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

8 b. The person shall be subject to discharge or
9 conditional release pursuant to the procedures set
10 forth in this section.

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

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

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

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

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

9 1. The Board shall be composed of:

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

17 b. one member who shall be an attorney licensed to
18 practice in this state and shall be appointed from a
19 list of not less than three names submitted to the
20 Governor by the Board of Governors of the Oklahoma Bar
21 Association,

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

3 d. one at-large member.

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

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

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

18 (1) the individual the Board is considering for
19 therapeutic visits, conditional release or
20 discharge, his or her treatment advocate, and
21 members of his or her treatment team,

22 (2) the Commissioner of Mental Health and Substance
23 Abuse Services or designee,
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- 1 (3) the Advocate General for the Department of Mental
2 Health and Substance Abuse Services or designee,
3 (4) the General Counsel for the Department of Mental
4 Health and Substance Abuse Services or designee,
5 and
6 (5) any other persons the Board and Commissioner of
7 Mental Health and Substance Abuse Services wish
8 to be present.

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

18 c. The Board shall promulgate rules concerning the
19 granting and structure of therapeutic visits,
20 conditional releases and discharge.

21 d. For purposes of this subsection, "therapeutic visit"
22 means a scheduled time period off campus which
23 provides for progressive tests of the ~~consumer's~~

1 ability of the consumer to maintain and demonstrate
2 coping skills.

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

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

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

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

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

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

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

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

21 Notice of the hearing shall be issued, at least
22 twenty-four (24) hours before the hearing, to the
23 hospital superintendent, the person, trial
24 counsel for the person, and the patient advocate

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

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

13 H. As used in this section, "court" shall mean the court
14 sitting in the county where the person is found to be insane.

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

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17 55-1-6204 GRS 12/18/14
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