SHORT TITLE: Criminal procedure; disallowing insanity as defense for criminal conduct; repealer; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 607 By: Smith

AS INTRODUCED

An Act relating to criminal procedure; amending 21 O.S. 1991, Section 152, which relates to persons capable of committing crimes; deleting certain classes of persons; amending 22 O.S. 1991, Sections 914, 1161, 1170, 1175.5 and 1175.6, which relate to form of verdict, acquittal on grounds of insanity, expense of keeping defendant, competency questions and disposition orders for competency; deleting language; modifying language; modifying references; disallowing insanity as defense for criminal conduct; requiring certain commitment; allowing court to suspend execution of sentence for reason of insanity; making defendant liable for remaining sentence; authorizing certain credits; construing provisions; directing liability for costs of keeping defendant; removing requirement to suspend criminal proceedings for competency hearing; making suspension of criminal proceeding at discretion of court; repealing 22 O.S. 1991, Sections 925 and 1176, which relate to claim of insanity and raising issue of mental illness at time of offense; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 152, is amended to read as follows:

Section 152. All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven (7) years~~.~~;

2. Children over the age of seven (7) years, but under the age of fourteen (14) years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness~~.~~;

3. ~~Idiots.~~

~~4. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.~~

~~5.~~ Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation~~.~~;

~~6.~~ 4. Persons who committed the act charged without being conscious thereof~~.~~; and

~~7.~~ 5. Persons who committed the act, or make the omission charged, while under involuntary subjection to the power of superiors.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 914, is amended to read as follows:

Section 914. A general verdict upon a plea of not guilty, is either "guilty", or "not guilty", which imports a conviction or acquittal of the offense charged. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the state", or "for the defendant". ~~When the defendant is acquitted on the ground that he was insane at the time of the commission of the~~

~~act charged, the verdict must be "not guilty by reason of insanity."~~ When the defendant is acquitted on the ground of variance between the charge and the proof, the verdict must be "not guilty by reason of variance between charge and proof".

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1161, is amended to read as follows:

Section 1161. ~~An~~ A criminal act committed by a person in a state of insanity ~~cannot~~ shall be punished as a public offense~~, nor can said person be tried, sentenced to punishment, or punished for a public offense while he is insane. When in any criminal action by indictment or information the defense of insanity is interposed either singly or in conjunction with some other defense, the jury shall state in the verdict, if it is one of acquittal, whether or not the defendant is acquitted on the ground of insanity. When the defendant is acquitted on the ground that he was insane at the time of the commission of the crime charged, said person shall not be discharged from custody until the court has made a determination that said person is not presently mentally ill and dangerous to the public peace or safety.~~

~~To assist the court in its determination, the court shall immediately issue an examination order and specify the state hospital for the mentally ill in which the said person is to be hospitalized. Upon the issuance of the order, the sheriff shall deliver the said person to the designated hospital for the mentally ill where the said person shall remain hospitalized for a period of not less than thirty (30) days. Within forty-five (45) days of said hospitalization, a hearing shall be conducted by the court to ascertain whether the said person is presently mentally ill and dangerous to the public peace or safety. During the required period of hospitalization the Department of Mental Health and Substance Abuse Services shall have the said person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical~~

~~psychologist. Each examiner shall individually prepare and submit to the court, the district attorney and trial counsel a report of his findings and an evaluation concerning whether the said person is presently mentally ill and dangerous to the public peace and safety. If the court is unsatisfied with the psychiatric reports or if a disagreement on the issue of present mental illness and dangerousness exists between the two examiners, the court may designate one or more additional psychiatrists and have them submit their findings and evaluations as specified above.~~

~~Within ten (10) days after the psychiatric reports are filed, the court must conduct a hearing to determine the said person's present condition as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. The district attorney must establish by a preponderance of the evidence that the defendant is presently mentally ill and dangerous to the public peace or safety. At this hearing the said person shall have the assistance of counsel and may present independent evidence as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. If the court finds that the said person is not presently mentally ill and dangerous to the public peace or safety, it shall immediately discharge the said person from hospitalization. If the court finds that the said person is presently mentally ill and dangerous to the public peace or safety, it shall commit the said person to the custody of the Department of Mental Health and Substance Abuse Services. The said person shall then be subject to discharge pursuant to the procedure set forth in the Mental Health and Substance Abuse Services Law.~~

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

~~During the period of hospitalization the Superintendent shall submit an annual report on the status of the said person to the court, the district attorney and the patient's advocate of the hospital in which the said person is hospitalized. Not less than twenty (20) days prior to the scheduled release of the said person the Superintendent of the hospital for the mentally ill must deliver a written notice of the proposed discharge to the court, the district attorney and the patient's advocate of the said hospital. Upon motion by the district attorney a second hearing shall be conducted by the court to ascertain if the said person is mentally ill and dangerous to the public peace or safety. This hearing shall be conducted under the same procedure as the first hearing and must occur not less than ten (10) days before the scheduled release. If the court determines that the said person continues to be mentally ill and dangerous to the public peace or safety, it shall return the said person to the hospital for additional treatment. Additional hearings may be conducted upon motion by the district attorney under the same provisions as described in this section~~. The fact that a person did not know right from wrong at the time of the commission of the criminal act shall not be a defense to any charge of criminal conduct.

Any defendant becoming insane after the imposition of a term of incarceration may be hospitalized in a state mental facility, having regard for the conditions of security the case may require, and shall be liable for the remainder of the sentence imposed, but may have credit for the time incarcerated for treatment; provided, however, if the defendant may be adequately treated by the Department of Corrections, the defendant shall remain in the custody of the Department.

Nothing contained in this section shall be construed to prevent the admission of expert evidence on the issues of mens rea or any state of mind which is an element of the offense, subject to the

rules of evidence. The defense of insanity shall not be available for any criminal act committed on or after the effective date of this act.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1170, is amended to read as follows:

Section 1170. The expenses of keeping the defendant in a facility operated by the Department of Mental Health and Substance Abuse Services or another facility are in the first instance chargeable to the county, but the county may recover them from the estate of the defendant, if ~~he have~~ there be any, or from a relative.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1175.5, is amended to read as follows:

Section 1175.5 The jury or the court, as the case may be, shall answer the following questions in determining the disposition of the person whose competency is in question:

1. Is the person incompetent to undergo further criminal proceedings at this time? If the answer is no, criminal proceedings shall be resumed. If the answer is yes, the following question shall be answered.

2. Can the incompetency of the person be corrected within a reasonable period of time, as defined by the court, by treatment, therapy or training? If the answer is yes, the court shall make the appropriate order. If the answer is no, the following questions shall be answered.

3. Is the person ~~mentally ill, mentally retarded or~~ a person requiring treatment as defined by Section ~~3~~ 1-101 of Title 43A of the Oklahoma Statutes?

4. Is the person a threat to the safety of ~~himself~~ self or others if released?

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1175.6, is amended to read as follows:

Section 1175.6 A. Upon the finding by the jury or the court as provided by Section 1175.5 of this title, the court shall issue the appropriate order regarding the person.

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the court shall remand the person to the Department of Mental Health and Substance Abuse Services, the Department of Human Services, other appropriate state agencies or a private care provider for appropriate treatment, therapy, or training;

3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, and a person requiring treatment as defined by Section 1-101 of Title 43A of the Oklahoma Statutes, then the court ~~shall~~ may order treatment as if there had been a finding pursuant to Title 43A of the Oklahoma Statutes that the defendant was a ~~mentally ill~~ person requiring treatment, without any further proceedings, and ~~shall~~ may suspend the criminal proceeding. The Department of Mental Health and Substance Abuse Services or other agency providing treatment to the person or the institution wherein the person ~~is~~ may be confined or treated shall make periodic reports to the court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding which may have been suspended shall be resumed; and

4. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, but is not a person requiring treatment as defined by Section 1-101 of Title 43A of the Oklahoma Statutes and is not a threat to himself or society, the court ~~shall~~ may remand the person to the Department of

Human Services for assistance, subject to assistance from any other appropriate state agencies and ~~shall~~ may suspend the criminal proceedings. The Department of Human Services shall make periodic reports to the court as to the status and activities of the person. If the Department of Human Services reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding which may have been suspended shall be resumed.

B. Any person arrested and charged with a criminal offense which is punishable by death, life imprisonment or life imprisonment without parole, who is found to be incompetent by the court and ordered into the custody of the Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection A of this section, shall be placed in a maximum security ward of the mental health facility designated by the Department of Mental Health and Substance Abuse Services until such time as ~~said~~ the person is adjudicated to be competent ~~or is adjudicated no longer determined to be a threat to any other person~~ at which time the criminal proceeding shall resume.

SECTION 7. REPEALER 22 O.S. 1991, Sections 925 and 1176, are hereby repealed.

SECTION 8. This act shall become effective July 1, 1995.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-0045 NP