STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2965 By: Sullivan

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 1161, as amended by Section 1, Chapter 188, O.S.L. 2004 (22 O.S. Supp. 2005, Section 1161), which relates to insanity; removing therapeutic visits; amending 43A O.S. 2001, Section 7-101, as last amended by Section 27, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, Section 7-101), which relates to insanity; prohibiting granting of certain leave or status under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1161, as amended by Section 1, Chapter 188, O.S.L. 2004 (22 O.S. Supp. 2005, 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.

2. 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 the defendant was insane at the time of the commission of the crime charged, the person shall not be discharged from custody until the court has made a determination that the person is not presently dangerous to the public peace and safety because the

person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes.

B. 1. 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 person is to be hospitalized. Upon the issuance of the order, the sheriff shall deliver the person to the designated hospital for the mentally ill where the person shall remain hospitalized for a period of not less than thirty (30) days.

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

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

2. If the court is dissatisfied with the reports or if a disagreement on the issue of mental illness and dangerousness exists between the two examiners, the court may designate one or more

additional examiners and have them submit their findings and evaluations as specified in paragraph 1 of this subsection.

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

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

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

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

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

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

E. If the court finds the person is not presently dangerous to the public peace or safety because the person is a person requiring

treatment pursuant to the provisions of Section 1-103 of Title 43A of the Oklahoma Statutes, but is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, the court may:

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

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

3. Order conditional release, as set forth in subsection ~~H~~ G of this section.

F. ~~1. For purposes of this subsection, "therapeutic visit" means a supervised or unsupervised scheduled time period off campus which provides for progressive tests of the consumer's ability to maintain and demonstrate coping skills. The Department shall promulgate rules concerning the granting and structure of these visits.~~

~~2. During the period of hospitalization the Department of Mental Health and Substance Abuse Services may administer or cause to be administered to the person such psychiatric, medical or other therapeutic treatment, including but not limited to medication, therapeutic visits and counseling, as in its judgment should be administered.~~

~~a. Therapeutic visits may occur if approved by a Department of Mental Health and Substance Abuse Services' Forensic Review Board and the Commissioner or designee. The Forensic Review Board shall submit its recommendation to the court, district attorney of the county where the person was found not guilty by reason of insanity, the person's trial counsel and the~~

~~person at least fourteen (14) days prior to the scheduled visit.~~

~~b. The district attorney may file an objection to the therapeutic visit within ten (10) days of receipt of the notice. If an objection is filed, the therapeutic visit is stayed until a hearing is held. The court shall hold a hearing not less than ten (10) days following an objection to determine whether the therapeutic visit is necessary for treatment, and if necessary, the nature and extent of the visit.~~

~~3. During the period of hospitalization the Superintendent shall submit an annual report on the status of the person to the court, the district attorney and the patient advocate general of the Department of Mental Health and Substance Abuse Services. Not less than twenty (20) days prior to the scheduled release of the person the Superintendent shall deliver a written notice of the proposed discharge to the court, the district attorney and the patient advocate general of the Department of Mental Health and Substance Abuse Services.~~

~~C.~~ Upon motion by the district attorney a subsequent hearing shall be conducted by the court to ascertain if the person is presently dangerous to the public peace and safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes. 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 person continues to be presently dangerous to the public peace and safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, it shall order the return of the person to the hospital for additional treatment.

~~H.~~ G. 1. Conditional release may be ordered for persons adjudicated not guilty by reason of insanity who are not believed to be presently dangerous to the public peace or safety.

2. Upon an examiner's recommendation for conditional release, a written plan for outpatient treatment, including recommendations from the examiner, shall be filed with the court, district attorney, the person's trial counsel, and the person. In its order of conditional release, the court shall specify conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the person's compliance with the conditions of release and progress in treatment.

3. To be eligible for conditional release, the person shall agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the Department of Mental Health and Substance Abuse Services, the appropriate community mental health centers and the appropriate district attorneys, law enforcement and court personnel.

4. Copies of the reports shall also be submitted to the district attorney, trial counsel for the person, the hospital superintendent where the release plan was initiated, and the person.

5. The court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause. The person placed on conditional release shall remain under the supervision of the Department of Mental Health and Substance Abuse Services until the committing court enters a final discharge order.

6. a. Any agency or individual involved in providing treatment with regard to the person's conditional release plan may prepare and file an affidavit under oath if the agency or individual believes that the

person has failed to comply with the conditions of release or that such person has progressed to the point that inpatient care is appropriate.

b. Any peace officer who receives such an affidavit shall take the person into protective custody and return the person to the forensic unit of the state hospital.

c. Hearing shall be conducted within three (3) days, excluding holidays and weekends, after the person is returned to the forensic unit of the state hospital to determine if the person has violated the conditions of release, or if full-time hospitalization is the least restrictive alternative consistent with the person's needs and the need for public safety. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the hospital superintendent, the person, trial counsel for the person, and the patient advocate general of the Department of Mental Health and Substance Abuse Services. If the person requires hospitalization because of a violation of the conditions of release or because of progression to the point that inpatient care is appropriate, the court may then modify the conditions of release.

~~I.~~ H. Additional hearings may be conducted upon motion by the district attorney under the same provisions as described in this section.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 7-101, as last amended by Section 27, Chapter 195, O.S.L. 2005 (43A O.S. Supp. 2005, Section 7-101), is amended to read as follows:

Section 7-101. A. The person in charge of a facility within the Department of Mental Health and Substance Abuse Services shall

discharge a consumer or permit the consumer to leave the facility as provided in this section.

B. The person in charge shall discharge a consumer:

1. Who is no longer a risk to self or others as defined in Section 1-103 of this title;

2. Who is capable of surviving safely in freedom alone or with the help of other state agencies, private entities, or willing and responsible family members or friends; provided, however, nothing in this section or Section 7-102 of this title shall be construed as requiring any state agency or private entity to provide services except as voluntarily agreed to by the agency and consumer; and

3. For whom a discharge plan has been developed pursuant to the provisions of Section 7-102 of this title.

C. The person in charge may grant a convalescent leave or visiting status to a consumer in accordance with policies prescribed by the Commissioner, except when the consumer is in the custody of the Department of Mental Health and Substance Abuse Services based on being found not guilty by reason of insanity. The facility granting a convalescent leave or visiting status to a consumer has no responsibility in returning the consumer to the facility should such become necessary. A convalescent leave or visiting status may be granted rather than a discharge when the complete recovery of the consumer can be determined only by permitting the consumer to leave the facility. The person in charge shall discharge a consumer who has not returned to the facility within twelve (12) months from the time a convalescent leave or visiting status was granted. Any return from convalescent leave or visiting status must be on a voluntary basis.

D. In accordance with policies prescribed by the Commissioner, a person in charge may transfer a consumer to an outpatient or other nonhospital status when, in the opinion of the person in charge, such transfer will not be detrimental to the public welfare or injurious

to the consumer and the necessary treatment may be continued on that basis; provided however, that before transferring the consumer, the person in charge shall ensure that appropriate financial resources and appropriate services are available to receive and care for such consumer after such transfer.

E. The person in charge of the facility shall notify the court that committed the consumer that the consumer has been discharged. Such notification shall be within forty-eight (48) hours after the actual discharge.

F. The expense of returning a consumer from convalescent leave, outpatient status or visiting status shall be that of:

1. The party removing the consumer from the facility; or

2. The Department. When it becomes necessary for the consumer to be returned from the county where the consumer happens to be, the Department shall reimburse the county pursuant to the provisions of the State Travel Reimbursement Act.

G. In the event authorization is necessary to accomplish the return of the consumer to the facility, such authority is hereby vested in the judge of the district court in the county where the consumer is located. Upon receipt of notice that the consumer needs to be returned to the facility, the judge shall cause the consumer to be brought before the court by issuance of a citation directed to the consumer to appear and show cause why the consumer should not be returned to the facility. The judge shall, if clear and convincing evidence is presented by testimony under oath that the consumer should be returned to the facility, enter an order returning the consumer. If there is a lack of clear and convincing evidence showing the necessity of such return, the consumer shall immediately be released. Law enforcement officers are authorized to take into custody, detain and transport a consumer pursuant to a citation or an order of the judge of the district court.

H. An attending physician of any consumer admitted to a private facility may discharge a consumer or permit the consumer to leave the facility subject to the same provisions applicable to the discharge or release of a consumer by the person in charge of a state facility.

SECTION 3. This act shall become effective November 1, 2006.

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