

ENROLLED HOUSE
BILL NO. 2765

By: Cox, Pittman, Collins,
Hoskin, McAffrey and
Shelton of the House

and

Crain of the Senate

An Act relating to mental health and substance abuse services; amending 22 O.S. 2001, Section 1161, as last amended by Section 8, Chapter 358, O.S.L. 2007 (22 O.S. Supp. 2007, Section 1161), which relates to discharge procedure of persons found insane; modifying procedures for certain determination made by the court; authorizing the administration of certain treatment to persons committed to the custody of the Department of Mental Health and Substance Abuse Services; providing for discharge or conditional release pursuant to certain procedures; creating Forensic Review Board; stating composition of Board; establishing length of certain terms; establishing duties of Board; exempting Board from Oklahoma Open Meeting Act; establishing guidelines for meetings of Board; establishing procedures upon specified Board recommendations; authorizing conditional release subject to certain conditions; requiring discharge upon certain determination; amending 43A O.S. 2001, Section 2-202, as last amended by Section 8, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2007, Section 2-202), which relates to powers and duties of Commissioner of Mental Health and Substance Abuse Services; deleting certain duty; 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 last amended by Section 8, Chapter 358, O.S.L. 2007 (22 O.S. Supp. 2007, 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 raised, but the defendant is not acquitted on the ground that the defendant was insane at the time of the commission of the crime charged, an issue concerning such defense may be raised on appeal. If the appellate court finds relief is required, the appellate court shall not have authority to modify the judgment or sentence, but will only have the authority to order a new trial or order resentencing without recommendations to sentencing.

3. 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~~ for the person to be examined by the Department of Mental Health and Substance Abuse Services at a facility the Department has designated to examine and treat forensic individuals. 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~~ facility.

2. Within forty-five (45) days of the court entering such hospitalization an order, 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.

a. 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 as in its judgment should be administered.

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

E. If at any time 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~~ F of this section.

F. There is hereby created a Forensic Review Board to be composed of seven (7) members appointed by the Governor with the advice and consent of the Senate. The Board members shall serve for

a term of five (5) years except that for members first appointed to the Board: one shall serve for a term ending December 31, 2008, two shall serve for a term ending December 31, 2009, two shall serve a term ending December 31, 2010, and two shall serve for a term ending December 31, 2011.

1. The Board shall be composed of:

- a. four licensed mental health professionals with experience in treating mental illness, at least one of whom is licensed as a Doctor of Medicine, a Doctor of Osteopathy, or a licensed clinical psychologist and shall be appointed from a list of seven names submitted to the Governor by the Department of Mental Health and Substance Abuse Services,
- b. one member who shall be an attorney licensed to practice in this state and shall be appointed from a list of not less than three names submitted to the Governor by the Board of Governors of the Oklahoma Bar Association,
- c. one member who shall be a retired judge licensed to practice in this state and shall be appointed from a list of not less than three names submitted to the Governor by the Judicial Nominating Committee, and
- d. one at-large member.

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

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

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

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

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

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

d. 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.~~

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

- ~~b. a. The district attorney may file an objection to the a recommendation for a therapeutic visit within ten (10) days of receipt of the notice.~~
- ~~b. 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. 4. During the period of hospitalization the Superintendent Department of Mental Health and Substance Abuse Services 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.~~

G. Upon motion by the district attorney a subsequent hearing or upon a recommendation for conditional release or discharge by the Forensic Review Board, the court shall be conducted by the court conduct a hearing to ascertain if the person is presently dangerous to the public peace and safety because the person is and 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~~ following the motion or request by the Forensic Review Board.

1. 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. 1. Conditional~~ 2. If the court determines that the person is not dangerous subject to certain conditions, the court may conditionally 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~~ the person subject to the following:

a. the Forensic Review Board has made a recommendation for conditional release, including 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 and a list of recommendations for the court to place as conditions on the release,

b. 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,~~

c. the person shall must 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~~

~~d.~~ 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. The Department of Mental Health and Substance Abuse Services shall assess the person placed on conditional release annually and shall have the authority to recommend discharge of the person to the Board,

~~6. a. Any~~

~~e.~~ 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.~~ (1) 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~~

(2) A 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. Additional hearings may be conducted upon motion by the district attorney under the same provisions as described in this section~~

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

SECTION 2. AMENDATORY 43A O.S. 2001, Section 2-202, as last amended by Section 8, Chapter 150, O.S.L. 2005 (43A O.S. Supp. 2007, Section 2-202), is amended to read as follows:

Section 2-202. A. Except as herein provided, the Commissioner of Mental Health and Substance Abuse Services shall have charge of the administration of the Department of Mental Health and Substance Abuse Services as directed by the Board of Mental Health and Substance Abuse Services and shall be charged with the duty of carrying out the provisions of the Mental Health Law.

B. The Commissioner may appoint necessary personnel to carry on the work of the Department, prescribe their titles and duties, and fix their compensation.

C. The Commissioner may prescribe policies for the operation of the Department. The Commissioner shall have the following additional powers and duties:

1. To appoint, with the consent of the Board, an executive director of each facility within the Department, and fix the qualifications, duties and compensation of the executive directors; to counsel with the various executive directors about facility needs and budget requests; and to prepare and submit for appropriate legislative action budget requests sufficient to carry on the functions of the Department. These budget requests shall be

submitted to the Board for its recommendations before being submitted for legislative action;

2. To develop, institute and administer such administrative and professional policies as may be necessary to guarantee effective, efficient and uniform operation of the Department and its facilities;

3. To prescribe uniform reports to be made by the executive directors of the facilities and designate forms to be used;

4. After conference with the executive director of each facility, determine the number of employees to be appointed and fix their respective titles, salaries, and wages which shall be as uniform as possible for comparable service;

5. To aid, assist and cooperate with the State Department of Health, institutions of higher learning, public schools, and others interested in public education regarding the issue of mental hygiene in the establishment of a sound mental health program in the State of Oklahoma;

6. To visit each facility in the Department at least once each calendar year. During such visits, the Commissioner shall have access to any or all facilities and records and shall have the privilege of interviewing all personnel and consumers within the facility. The purpose of the visits to the facility shall be:

- a. to review and evaluate the professional and administrative activity of such facilities,
- b. to ensure compliance with medical and administrative policies and procedures established by the Department,
- c. to modify and revise existing operating procedure to improve operational effectiveness,
- d. to institute new policies and procedures to effect improvement and economy of overall operation, and
- e. to coordinate the activities of each facility with the overall operation of the Department;

7. To authorize other members of the Department to visit the facilities in the Department. These persons shall have the same

power to inspect the facility and its records and to interview personnel and consumers as the Commissioner;

8. To designate the type of consumer that will be cared for at each facility and designate hospital or community mental health center districts for the purpose of determining to which of the facilities within the Department or community mental health centers persons committed from each county shall initially be sent. These designations may be changed from time to time.

- a. The Commissioner or a designee of the Commissioner may establish specific hours for consumer admissions at each facility.
- b. The Commissioner or a designee of the Commissioner may delay inpatient admissions when such admissions would cause facilities to exceed their authorized capacity.
- c. Consumers may be transferred from one facility to another within the Department on the authority of the Commissioner as provided for in the Mental Health Law.
- d. Permanent transfer of a consumer may be made when it is apparent that the general welfare, care, and treatment of the consumer can be more effectively provided at another facility, provided the parents or guardian are notified as soon as possible of the transfer.
- e. Temporary transfer of a consumer may be made in order that a consumer may have the advantage of special services not available at the facility of the present residence of the consumer.
- f. Requests for transfer shall be initiated by the executive director of the facility in which the consumer resides.
- g. Sufficient supporting information from the records of the consumer shall be submitted by the executive director to the Commissioner to warrant a decision as to the advisability of the transfer;

9. To call meetings of the executive directors of the facilities in the Department, and act as chair of ~~such~~ the meetings,

to discuss common problems in order to obtain uniformity and bring about coordination of the facilities for the maximum service to the state. Called meetings may or may not be held jointly with the Board;

10. To be the chair of a Board of Psychiatric Examiners to review the case of any consumer, and to examine any consumer when the executive director of any facility concludes that a consumer within ~~such~~ the facility is subject to discharge but ~~such~~ the executive director is unwilling to discharge the consumer as provided in the Mental Health Law.

- a. The Board of Psychiatric Examiners shall be composed of the Commissioner and two members selected by the Board. Members of the Board of Psychiatric Examiners shall be selected from persons who are qualified examiners according to the Mental Health Law.
- b. The Commissioner may designate a third qualified examiner to act as chair when circumstances warrant and when the Commissioner deems it necessary;

11. To keep a list of all nonresidents admitted to a facility within the Department and to make every effort possible to make arrangements with other states so that mentally ill persons who are being cared for at public expense in any facility in this state and who are citizens or residents of ~~such~~ other states may be transferred at the expense of this state to similar facilities in ~~such~~ other states.

- a. The Commissioner shall not prevail upon relatives or friends of such mentally ill person or any other person to defray transfer expenses.
- b. Mentally ill persons who are being cared for at public expense in hospitals for mentally ill or facilities of other states, other than persons who have been transferred from penal institutions and the terms of whose sentences to ~~such~~ the penal institutions shall not have expired, and who are citizens or residents of this state, may be transferred at the expense of ~~such~~ other states to similar facilities in this state.
- c. Removal of a nonresident to the nonresident's state may be authorized by the Commissioner and all expenses

of ~~such~~ the transfer shall be taken from the Travel Fund of the facility if the transfer is to be at public expense.

- d. Consumers returned to this state pursuant to these provisions shall be delivered directly to the hospital designated by the Commissioner and shall be admitted in accordance with these provisions;

12. To prescribe the official forms of any and all papers not specifically described in the Mental Health Law including those to be used in ordering a person to a facility within the Department, except that when a person is ordered to a facility by a court, the order to hospitalize or admit ~~such~~ the person may be on ~~such~~ a form as the court deems proper;

13. To utilize the services of employees of the Department of Central Services, the State Department of Health, and the Department of Human Services when authorized by the director or commissioner thereof. When employees of those agencies are used, the Commissioner of Mental Health and Substance Abuse Services may authorize payment of their traveling expenses as provided by law;

14. To make contracts and agreements with other departments of this state to carry out these provisions;

15. To make a written report annually to the Governor concerning the administration of the Department and submit copies thereof to members of the Legislature. The report shall be presented one (1) month prior to the convening of any regular session of the Legislature and shall include:

- a. specific information regarding the number of consumers admitted, treated, and discharged,
- b. the methods of treatment used and an appraisal of the success thereof,
- c. the financial condition and needs of each facility in the Department,
- d. any long-range plans or recommendations for the utilization and improvement of facilities, equipment, and personnel and for the care and treatment of consumers,

- e. any recommendations requiring legislation, and
- f. major findings, in summarized form, obtained by visits made pursuant to the provisions of paragraph 6 of this section;

16. To designate as peace officers qualified personnel in the fire and safety officer, security officer and correctional officer job classifications.

- a. The authority of designated employees shall be limited to:
 - (1) maintaining custody of consumers in facilities,
 - (2) maintaining security or performing functions similar to those performed by correctional officers or other security personnel for Department of Corrections inmates housed in mental health facilities,
 - (3) preventing attempted escapes, and
 - (4) pursuing and returning court committed consumers and Department of Corrections inmates who have escaped from Department facilities.
- b. The powers and duties of peace officers may be exercised for the purpose of maintaining custody of any consumer being transported within the state and outside the State of Oklahoma pursuant to the authority of the Interstate Compact on Mental Health.
- c. To become qualified for designation as a peace officer pursuant to this section, an employee shall meet the training and screening requirements of the Department of Corrections pursuant to subparagraphs a through g of paragraph 2 of subsection A of Section 510 of Title 57 of the Oklahoma Statutes and be of good moral character; and

~~17. To establish a Forensics Review Board to annually review the case of every consumer ordered to the custody of the Department through a "not guilty by reason of insanity" verdict. The Forensics~~

~~Review Board shall be composed of three (3) licensed mental health professionals, at least one of whom is licensed as a Doctor of Medicine, a Doctor of Osteopathy, or a licensed clinical psychologist, who shall be selected by the Commissioner; and~~

~~18.~~ Any other power necessary to implement the provisions of the Mental Health Law.

SECTION 3. This act shall become effective November 1, 2008.

Passed the House of Representatives the 4th day of March, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 10th day of April, 2008.

Presiding Officer of the Senate