

ENROLLED SENATE
BILL NO. 905

By: Nichols of the Senate

and

Duncan of the House

An Act relating to crimes and criminal procedure; amending 21 O.S. 2001, Section 22, which relates to outraging public decency; including urination in public; amending 21 O.S. 2001, Section 652, as amended by Section 2, Chapter 200, O.S.L. 2005 (21 O.S. Supp. 2006, Section 652), which relates to shooting firearm with intent to kill; increasing penalty range; defining term; amending 22 O.S. 2001, Section 114, as amended by Section 1, Chapter 293, O.S.L. 2006 (22 O.S. Supp. 2006, Section 114), which relates to restitution agreements for false or bogus checks; modifying maximum period for deferring prosecution; amending 22 O.S. 2001, Section 152, as last amended by Section 1 of Enrolled House Bill No. 1285 of the 1st Session of the 51st Oklahoma Legislature, which relates to time limitations on prosecutions of crimes; modifying certain limitation; amending 22 O.S. 2001, Section 305.1, which relates to deferred prosecution; modifying maximum period for deferring prosecution; amending 22 O.S. 2001, Section 982a, which relates to judicial review; limiting application of judicial review; 22 O.S. 2001, Section 1015, as amended by Section 1, Chapter 118, O.S.L. 2004 (22 O.S. Supp. 2006, Section 1015), which relates to place of execution pursuant to judgment of death; authorizing designees for certain persons allowed to witness executions; amending 22 O.S. 2001, Section 1161, as amended by Section 1, Chapter 188, O.S.L. 2004 (22 O.S. Supp. 2006, Section 1161), which relates to criminal acts committed by persons in state of insanity; providing appeal procedure if

defense of insanity is raised and defendant is not acquitted on grounds of insanity; amending 22 O.S. 2001, Section 1222, which relates to search warrants; providing for anticipatory search warrant; directing the magistrate to insert certain direction for probable cause to search; amending 57 O.S. 2001, Section 571, which relates to definitions; modifying definition of nonviolent offense; naming certain position Child Forensic Interviewer; providing Agent III status; directing certain percentage of duties be applied to certain functions; providing for codification; 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. 2001, Section 22, is amended to read as follows:

Section 22. Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, including but not limited to urination in a public place, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a misdemeanor.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 652, as amended by Section 2, Chapter 200, O.S.L. 2005 (21 O.S. Supp. 2006, Section 652), is amended to read as follows:

Section 652. A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life.

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary custody of the Department of Corrections for a term ~~of~~ not less than two (2) years nor ~~more than twenty (20) years~~ exceeding life.

C. Any person who commits any assault and battery upon another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting the execution of any legal process, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding ~~twenty (20) years~~ life.

D. The provisions of this section shall not apply to:

1. Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; or

2. Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

E. Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 114, as amended by Section 1, Chapter 293, O.S.L. 2006 (22 O.S. Supp. 2006, Section 114), is amended to read as follows:

Section 114. A. The district attorney may enter into a written restitution agreement with the defendant to defer prosecution on a false or bogus check for a period to be determined by the district attorney, not to exceed ~~two (2)~~ three (3) years, pending restitution

being made to the victim of the bogus check as provided in this section.

B. Each restitution agreement shall include a provision requiring the defendant to pay to the victim a Twenty-five Dollar (\$25.00) fee and to the district attorney a fee equal to the amount which would have been assessed as court costs upon filing of the case in district court plus Twenty-five Dollars (\$25.00) for each check covered by the restitution agreement; provided, every check in an amount of Fifty Dollars (\$50.00) or more shall require a separate fee to be paid to the district attorney in an amount equal to the amount which would be assessed as court costs for the filing of a felony case in district court plus Twenty-five Dollars (\$25.00). This money shall be deposited in a special fund with the county treasurer to be known as the "Bogus Check Restitution Program Fund". This fund shall be used by the district attorney to defray any lawful expense of the district attorney's office. The district attorney shall keep records of all monies deposited to and disbursed from this fund. The records of the fund shall be audited at the same time the records of county funds are audited.

C. Restitution paid by the defendant to the victim shall include the face amount of the check plus any charges the victim may have been required to pay to a bank as the result of having received the bogus check. If, instead of paying restitution directly to the victim, the defendant delivers restitution funds to the office of the district attorney, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the victim by a warrant signed by the district attorney or a member of the staff assigned to the Bogus Check Restitution Program. The district attorney shall keep full records of all restitution monies received and disbursed. These records shall be audited at the same time the county funds are audited.

D. Restitution paid by the defendant to the Oklahoma Tax Commission shall include the face amount of the check plus the administrative service fee authorized pursuant to Section 218 of Title 68 of the Oklahoma Statutes. If the defendant delivers such restitution funds to the office of the district attorney instead of paying restitution directly to the ~~Oklahoma~~ Tax Commission, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the

~~Oklahoma~~ Tax Commission by warrant signed by the district attorney or a member of the staff assigned to the Bogus Check Restitution Program or shall transmit the restitution funds directly to the ~~Oklahoma~~ Tax Commission.

E. If the defendant fails to comply with the restitution agreement, the district attorney may file an information and proceed with the prosecution of the defendant as provided by law.

F. The victim may authorize an administrative service fee to be paid by such victim to the district attorney or other third-party vendor to facilitate electronic transfer of checks to the Bogus Check Restitution Program.

G. The district attorney is authorized to contract for a per-item fee with a third-party vendor to facilitate electronic transfer of checks into the Bogus Check Restitution Program.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 152, as last amended by Section 1 of Enrolled House Bill No. 1285 of the 1st Session of the 51st Oklahoma Legislature, is amended to read as follows:

Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, falsification of public records of the state or any county, school district, municipality or other subdivision thereof, and conspiracy to defraud the State of Oklahoma or any county, school district, municipality or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of criminal conspiracy, the crime of embezzlement, pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma Statutes, or the financial exploitation of a vulnerable adult,

pursuant to Sections 843.1, 843.3 and 843.4 of Title 21 of the Oklahoma Statutes, shall be commenced within five (5) years after the discovery of the crime.

B. Prosecutions for criminal violations of any state income tax laws shall be commenced within five (5) years after the commission of such violation.

C. 1. Prosecutions for the crime of rape or forcible sodomy, sodomy, lewd or indecent proposals or acts against children, involving minors in pornography pursuant to Section 886, 888, 1111, 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of the Oklahoma Statutes, and child abuse pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, shall be commenced within twelve (12) years after the discovery of the crime.

2. However, prosecutions for the crimes listed in paragraph 1 of this subsection may be commenced at any time after the commission of the offense if:

- a. the victim notified law enforcement within twelve (12) years after the discovery of the crime,
- b. physical evidence is collected and preserved that is capable of being tested to obtain a profile from deoxyribonucleic acid (DNA), and
- c. the identity of the offender is subsequently established through the use of a DNA profile using evidence listed in subparagraph b of this paragraph.

A prosecution under this exception must be commenced within three (3) years from the date on which the identity of the suspect is established by DNA testing.

D. Prosecutions for criminal violations of any provision of the Oklahoma Wildlife Conservation Code shall be commenced within three (3) years after the commission of such offense.

E. Prosecutions for the crime of criminal fraud or workers' compensation fraud pursuant to Section 1541.1, 1541.2, 1662 or 1663 of Title 21 of the Oklahoma Statutes shall commence within three (3)

years after the discovery of the crime, but in no event greater than seven (7) years after the commission of the crime.

F. Prosecution for the crime of false or bogus check, Section 1541.1, 1541.2, 1541.3 or 1541.4 of Title 21 of the Oklahoma Statutes, shall be commenced within five (5) years after the commission of such offense.

G. Prosecution for the crime of solicitation for murder in the first degree pursuant to Section 701.16 of Title 21 of the Oklahoma Statutes shall be commenced within seven (7) years after the discovery of the crime. For purposes of this subsection, "discovery" means the date upon which the crime is made known to anyone other than a person involved in the solicitation.

H. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.

I. ~~Prosecutions~~ Prosecution for the crime of accessory ~~to a felony pursuant to Section 173 of Title 21 of the Oklahoma Statutes shall be subject to~~ after the fact must be commenced within the same statute of limitations as if that of the felony for which the person had committed the substantive offense acted as an accessory.

J. As used in paragraph 1 of subsection C of this section, "discovery" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.

SECTION 5. AMENDATORY 22 O.S. 2001, Section 305.1, is amended to read as follows:

Section 305.1 Before the filing of an information against a person accused of committing a crime, the State of Oklahoma, through its district attorney, may agree with an accused to defer the filing of a criminal information for a period not to exceed ~~two (2)~~ three (3) years.

The State of Oklahoma may include any person in a deferred prosecution program if it is in the best interests of the accused and not contrary to the public interest. Each district attorney

shall adopt and promulgate guidelines which shall indicate what factors shall be considered in including an accused in the deferred prosecution program. The guidelines shall insure that the State of Oklahoma considers in each case at least the following factors:

1. Whether the State of Oklahoma has sufficient evidence to achieve conviction;

2. The nature of the offense with priority given to first offenders and nonviolent crimes;

3. Any special characteristics of the accused;

4. Whether the accused will cooperate and benefit from a deferred prosecution program;

5. Whether available programs are appropriate to the accused person's needs;

6. Whether the services for the accused are more readily available from the community or from the corrections system;

7. Whether the accused constitutes a substantial danger to others;

8. The impact of the deferred prosecution on the community;

9. The recommendations of the law enforcement agency involved in the case;

10. The opinions of the victim; and

11. Any mitigating or aggravating circumstances.

SECTION 6. AMENDATORY 22 O.S. 2001, Section 982a, is amended to read as follows:

Section 982a. A. Any time within twelve (12) months after a sentence is imposed or within twelve (12) months after probation has been revoked, the court imposing sentence or revocation of probation may modify such sentence or revocation by directing that another penalty be imposed, if the court is satisfied that the best

interests of the public will not be jeopardized. This section shall not apply to convicted felons who have been in confinement in any state prison system for any previous felony conviction during the ten-year period preceding the date that the sentence this section applies to was imposed. Further, without the consent of the district attorney, this section shall not apply to sentences imposed pursuant to a plea agreement.

B. The Department of Corrections shall provide the court imposing sentence or revocation of probation with the report by the Lexington Assessment and Reception Center and any other information the Department can supply on the inmate. The court shall consider such reports when modifying the sentence or revocation of probation.

C. If the court considers modification of the sentence or revocation of probation, a hearing shall be made in open court. The clerk of the court imposing sentence or revocation of probation shall give notice of the hearing and provide a copy of the report by the Lexington Assessment and Reception Center to the inmate, the inmate's legal counsel and the district attorney of the county in which the inmate was convicted not less than twenty-one (21) days prior to the hearing.

D. If an appeal is taken which results in a modification of the sentence or revocation of probation of the defendant, such sentence may be further modified in the manner hereinbefore described within twelve (12) months after the receipt by the clerk of the district court of the mandate from the Supreme Court or the Court of Criminal Appeals.

SECTION 7. AMENDATORY 22 O.S. 2001, Section 1015, as amended by Section 1, Chapter 118, O.S.L. 2004 (22 O.S. Supp. 2006, Section 1015), is amended to read as follows:

Section 1015. A. A judgment of death must be executed at the Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered.

B. The judgment of execution shall take place under the authority of the Director of the Oklahoma Department of Corrections and the warden must be present along with other necessary prison and corrections officials to carry out the execution. The warden must

invite the presence of a physician and the district attorney of the county in which the crime occurred or his or her designee, the judge who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and the sheriff of the county wherein the conviction was had, to witness the execution; in addition, the Cabinet Secretary of Safety and Security must be invited and other correctional personnel deemed appropriate and approved by the Director. The warden shall, at the request of the defendant, permit the presence of such ministers of the defendant's choice, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name; provided, reporters from recognized members of the news media will be admitted upon proper identification, application and approval of the warden.

C. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state or pursuant to federal authority, or any combination thereof, and this state has priority to execute the defendant, the warden must invite the prosecuting attorney or his or her designee, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has issued. The above mentioned officials shall be allowed to witness the execution or view the execution by closed circuit television as determined by the Director of the Department of Corrections.

D. A place shall be provided at the Oklahoma State Penitentiary at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area to which other nonfamily member witnesses are admitted, provided, however, if there are multiple deceased victims, the Department shall not be required to provide separate areas for each family of each deceased victim. If facilities are not capable or sufficient to provide all immediate family members with a direct view of the execution, the Department of Corrections may broadcast the execution by means of a closed circuit television system to an area in which other immediate family members may be located.

Immediate family members may request individuals not directly related to the deceased victim but who serve a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister or licensed counselor. The warden in consultation with the Director shall approve or disapprove such requests. Provided further, the Department may set a limit on the number of witnesses or viewers within occupancy limits.

As used in this section, "members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member specified in this subsection.

E. Any surviving victim of the defendant who is eighteen (18) years of age or older may view the execution by closed circuit television with the approval of both the Director of the Department of Corrections and the warden. The Director and warden shall prioritize persons to view the execution, including immediate family members, surviving victims, and supporting persons, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of their perpetrator may have an accompanying support person as provided for members of the immediate family of a deceased victim. As used in this subsection, "surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction.

SECTION 8. AMENDATORY 22 O.S. 2001, Section 1161, as amended by Section 1, Chapter 188, O.S.L. 2004 (22 O.S. Supp. 2006, 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. 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 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.

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

SECTION 9. AMENDATORY 22 O.S. 2001, Section 1222, is amended to read as follows:

Section 1222. A search warrant may be issued and property seized upon any of the following grounds:

First: When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Second: When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

Third: When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in

the possession of another to whom ~~he~~ the person may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from such person, or from a house or other place occupied by ~~him~~ the person, or under ~~his~~ the person's control, or from the possession of the person to whom ~~he~~ the person may have so delivered it.

Fourth: When the property constitutes evidence that an offense was committed or that a particular person participated in the commission of an offense.

Fifth: When there is probable cause to believe that, at a future time, the property or items sought which are intended to be used to commit a public offense, will be located at a particular place. Under such circumstances, the magistrate shall insert a direction in the search warrant making execution of the warrant contingent upon the happening of an event which evidences probable cause that the item to be seized is in the place to be searched.

Sixth: As authorized by any provision of the Security of Communications Act.

SECTION 10. AMENDATORY 57 O.S. 2001, Section 571, is amended to read as follows:

Section 571. As used in the Oklahoma Statutes, unless another definition is specified:

1. "Capacity" means the actual available bedspace as certified by the State Board of Corrections subject to applicable federal and state laws and the rules and regulations promulgated under such laws;

2. "Nonviolent offense" means any felony offense except the following, or any attempts to commit or conspiracy or solicitation to commit the following crimes:

- a. assault, battery, or assault and battery with a dangerous weapon;

- b. aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law;
- c. poisoning with intent to kill;
- d. shooting with intent to kill;
- e. assault with intent to kill;
- f. assault with intent to commit a felony;
- g. assaults while masked or disguised;
- h. murder in the first degree;
- i. murder in the second degree;
- j. manslaughter in the first degree;
- k. manslaughter in the second degree;
- l. kidnapping;
- m. burglary in the first degree;
- n. burglary with explosives;
- o. kidnapping for extortion;
- p. maiming;
- q. robbery;
- r. robbery in the first degree;
- s. robbery in the second degree;
- t. armed robbery;
- u. robbery by two (2) or more persons;

- v. robbery with dangerous weapon or imitation firearm;
- w. child beating;
- x. wiring any equipment, vehicle or structure with explosives;
- y. forcible sodomy;
- z. rape in the first degree;
- aa. rape in the second degree;
- bb. rape by instrumentation;
- cc. lewd or indecent proposition or lewd or indecent act with a child;
- dd. use of a firearm or offensive weapon to commit or attempt to commit a felony;
- ee. pointing firearms;
- ff. rioting;
- gg. inciting to riot;
- hh. arson in the first degree;
- ii. injuring or burning public buildings;
- jj. sabotage;
- kk. criminal syndicalism;
- ll. extortion;
- mm. obtaining signature by extortion;
- nn. seizure of a bus, discharging firearm or hurling missile at bus; ~~or~~

- oo. mistreatment of a mental patient; or
- pp. using a vehicle to facilitate the discharge of a weapon pursuant to Section 652 of Title 21 of the Oklahoma Statutes.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.38a of Title 74, unless there is created a duplication in numbering, reads as follows:

The position of the Child Abuse Response Team (CART) forensic interviewer pursuant to Section 150.38 of Title 74 of the Oklahoma Statutes, shall be designated as Child Forensic Interviewer. The starting position of the Child Forensic Interviewer shall be an Agent III and shall receive the pay rate, benefits, and all other status of such position. One hundred percent (100%) of the duties and responsibilities of the position of Child Forensic Interviewer shall be directed and applied to the education, training, and services of interviewing children involved in a crime.

SECTION 12. This act shall become effective July 1, 2007.

SECTION 13. 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.

Passed the Senate the 23rd day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2007.

Presiding Officer of the House
of Representatives