

CS for SB 905

1 THE STATE SENATE
2 Monday, February 26, 2007

3 Committee Substitute for
4 Senate Bill No. 905

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 905 - By: NICHOLS of the
6 Senate and DUNCAN of the House.

7 [Crimes and criminal procedure - penalty - expungement -
8 limitations to prosecution - violent offense - effective
9 date -
10 emergency]

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

12 SECTION 1. AMENDATORY 21 O.S. 2001, Section 652, as
13 amended by Section 2, Chapter 200, O.S.L. 2005 (21 O.S. Supp. 2006,
14 Section 652), is amended to read as follows:

15 Section 652. A. Every person who intentionally and wrongfully
16 shoots another with or discharges any kind of firearm, with intent
17 to kill any person, including an unborn child as defined in Section
18 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be
19 guilty of a felony punishable by imprisonment in the State
20 Penitentiary not exceeding life.

21 B. Every person who uses any vehicle to facilitate the
22 intentional discharge of any kind of firearm, crossbow or other
23 weapon in conscious disregard for the safety of any other person or
24 persons, including an unborn child as defined in Section 1-730 of
25 Title 63 of the Oklahoma Statutes, shall upon conviction be guilty

1 of a felony punishable by imprisonment in the ~~State Penitentiary~~
2 custody of the Department of Corrections for a term of not less than
3 two (2) years nor ~~more than twenty (20) years~~ exceeding life.

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

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

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

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

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

1 SECTION 2. AMENDATORY 21 O.S. 2001, Section 885, is
2 amended to read as follows:

3 Section 885. Persons who, being within the degrees of
4 consanguinity within which marriages are by the laws of the state
5 declared incestuous and void, intermarry with each other, or commit
6 adultery or fornication with each other, shall be guilty of a felony
7 punishable by imprisonment in the ~~State Penitentiary not exceeding~~
8 ~~ten (10)~~ custody of the Department of Corrections for not less than
9 three (3) years nor more than twenty (20) years.

10 SECTION 3. AMENDATORY 22 O.S. 2001, Section 18, as last
11 amended by Section 1, Chapter 406, O.S.L. 2004 (22 O.S. Supp. 2006,
12 Section 18), is amended to read as follows:

13 Section 18. Persons authorized to file a motion for
14 expungement, as provided herein, must be within one of the following
15 categories:

- 16 1. The person has been acquitted;
- 17 2. The conviction was reversed with instructions to dismiss by
18 an appellate court of competent jurisdiction, or an appellate court
19 of competent jurisdiction reversed the conviction and the district
20 attorney subsequently dismissed the charge;
- 21 3. The factual innocence of the person was established by the
22 use of deoxyribonucleic acid (DNA) evidence subsequent to
23 conviction;

1 4. The person was arrested and no charges of any type,
2 including charges for an offense different than that for which the
3 person was originally arrested are filed or charges are dismissed
4 within one (1) year of the arrest, or all charges are dismissed on
5 the merits; however, this provision shall not apply if the person
6 entered a plea of guilty or nolo contendere to any alcohol-related
7 driving offense;

8 5. The statute of limitations on the offense had expired and no
9 charges were filed;

10 6. The person was under eighteen (18) years of age at the time
11 the offense was committed and the person has received a full pardon
12 for the offense;

13 7. The offense was a misdemeanor, the person has not been
14 convicted of any other misdemeanor or felony, no felony or
15 misdemeanor charges are pending against the person, and at least ten
16 (10) years have passed since the judgment was entered;

17 8. The offense was a nonviolent felony, as defined in Section
18 571 of Title 57 of the Oklahoma Statutes, the person has received a
19 full pardon for the offense, the person has not been convicted of
20 any other misdemeanor or felony, no felony or misdemeanor charges
21 are pending against the person, and at least ten (10) years have
22 passed since the conviction; or

1 9. The person has been charged or arrested or is the subject of
2 an arrest warrant for a crime that was committed by another person
3 who has appropriated or used the person's name or other
4 identification without the person's consent or authorization.

5 For purposes of ~~this act~~ Section 18 et seq. of this title,
6 "expungement" shall mean the sealing of criminal records. Records
7 expunged pursuant to paragraph 9 of this section shall be sealed to
8 the public but not to law enforcement agencies for law enforcement
9 purposes.

10 SECTION 4. AMENDATORY 22 O.S. 2001, Section 114, as
11 amended by Section 1, Chapter 293, O.S.L. 2006 (22 O.S. Supp. 2006,
12 Section 114), is amended to read as follows:

13 Section 114. A. The district attorney may enter into a written
14 restitution agreement with the defendant to defer prosecution on a
15 false or bogus check for a period to be determined by the district
16 attorney, not to exceed ~~two (2)~~ three (3) years, pending restitution
17 being made to the victim of the bogus check as provided in this
18 section.

19 B. Each restitution agreement shall include a provision
20 requiring the defendant to pay to the victim a Twenty-five Dollar
21 (\$25.00) fee and to the district attorney a fee equal to the amount
22 which would have been assessed as court costs upon filing of the
23 case in district court plus Twenty-five Dollars (\$25.00) for each

1 check covered by the restitution agreement; provided, every check in
2 an amount of Fifty Dollars (\$50.00) or more shall require a separate
3 fee to be paid to the district attorney in an amount equal to the
4 amount which would be assessed as court costs for the filing of a
5 felony case in district court plus Twenty-five Dollars (\$25.00).
6 This money shall be deposited in a special fund with the county
7 treasurer to be known as the "Bogus Check Restitution Program Fund".
8 This fund shall be used by the district attorney to defray any
9 lawful expense of the district attorney's office. The district
10 attorney shall keep records of all monies deposited to and disbursed
11 from this fund. The records of the fund shall be audited at the
12 same time the records of county funds are audited.

13 C. Restitution paid by the defendant to the victim shall
14 include the face amount of the check plus any charges the victim may
15 have been required to pay to a bank as the result of having received
16 the bogus check. If, instead of paying restitution directly to the
17 victim, the defendant delivers restitution funds to the office of
18 the district attorney, the district attorney shall deposit such
19 funds in a depository account in the office of the county treasurer
20 to be disbursed to the victim by a warrant signed by the district
21 attorney or a member of the staff assigned to the Bogus Check
22 Restitution Program. The district attorney shall keep full records

1 of all restitution monies received and disbursed. These records
2 shall be audited at the same time the county funds are audited.

3 D. Restitution paid by the defendant to the Oklahoma Tax
4 Commission shall include the face amount of the check plus the
5 administrative service fee authorized pursuant to Section 218 of
6 Title 68 of the Oklahoma Statutes. If the defendant delivers such
7 restitution funds to the office of the district attorney instead of
8 paying restitution directly to the ~~Oklahoma~~ Tax Commission, the
9 district attorney shall deposit such funds in a depository account
10 in the office of the county treasurer to be disbursed to the
11 ~~Oklahoma~~ Tax Commission by warrant signed by the district attorney
12 or a member of the staff assigned to the Bogus Check Restitution
13 Program or shall transmit the restitution funds directly to the
14 ~~Oklahoma~~ Tax Commission.

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

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

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

4 SECTION 5. AMENDATORY 22 O.S. 2001, Section 152, as last
5 amended by Section 2, Chapter 215, O.S.L. 2006 (22 O.S. Supp. 2006,
6 Section 152), is amended to read as follows:

7 Section 152. A. Prosecutions for the crimes of bribery,
8 embezzlement of public money, bonds, securities, assets or property
9 of the state or any county, school district, municipality or other
10 subdivision thereof, or of any misappropriation of public money,
11 bonds, securities, assets or property of the state or any county,
12 school district, municipality or other subdivision thereof,
13 falsification of public records of the state or any county, school
14 district, municipality or other subdivision thereof, and conspiracy
15 to defraud the State of Oklahoma or any county, school district,
16 municipality or other subdivision thereof in any manner or for any
17 purpose shall be commenced within seven (7) years after the
18 discovery of the crime; provided, however, prosecutions for the
19 crimes of embezzlement or misappropriation of public money, bonds,
20 securities, assets or property of any school district, including
21 those relating to student activity funds, or the crime of
22 falsification of public records of any independent school district,
23 the crime of criminal conspiracy, the crime of embezzlement,

1 pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma
2 Statutes, or the financial exploitation of a vulnerable adult,
3 pursuant to Sections 843.1 ~~and~~, 843.3 and 843.4 of Title 21 of the
4 Oklahoma Statutes ~~and Section 1 of this act~~, shall be commenced
5 within five (5) years after the discovery of the crime.

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

9 C. 1. Prosecutions for the crime of rape or forcible sodomy,
10 sodomy, lewd or indecent proposals or acts against children,
11 involving minors in pornography pursuant to Section 886, 888, 1111,
12 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of the
13 Oklahoma Statutes, and child abuse pursuant to Section 7115 of Title
14 10 of the Oklahoma Statutes, shall be commenced within twelve (12)
15 years after the discovery of the crime.

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

19 a. the victim notified law enforcement within twelve (12)
20 years after the discovery of the crime,

21 b. physical evidence is collected and preserved that is
22 capable of being tested to obtain a profile from
23 deoxyribonucleic acid (DNA), and

1 c. the identity of the offender is subsequently
2 established through the use of a DNA profile using
3 evidence listed in subparagraph b of this paragraph.
4 A prosecution under this exception must be commenced within three
5 (3) years from the date on which the identity of the suspect is
6 established by DNA testing.

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

10 E. Prosecutions for the crime of criminal fraud or workers'
11 compensation fraud pursuant to Section 1541.1, 1541.2, 1662 or 1663
12 of Title 21 of the Oklahoma Statutes shall commence within three (3)
13 years after the discovery of the crime, but in no event greater than
14 seven (7) years after the commission of the crime.

15 F. Prosecution for the crime of false or bogus check, Section
16 1541.1, 1541.2, 1541.3 or 1541.4 of Title 21 of the Oklahoma
17 Statutes, shall be commenced within five (5) years after the
18 commission of such offense.

19 G. Prosecution for the crime of solicitation for murder in the
20 first degree pursuant to Section 701.16 of Title 21 of the Oklahoma
21 Statutes shall be commenced within seven (7) years after the
22 discovery of the crime. For purposes of this subsection,

1 "discovery" means the date upon which the crime is made known to
2 anyone other than a person involved in the solicitation.

3 H. Prosecution for the crime of accessory after the fact must
4 be commenced within the same time limitation as that of the felony
5 for which the person acted as an accessory.

6 I. Prosecutions for the crimes listed under the Oklahoma
7 Corrupt Organizations Prevention Act, Sections 1401 et seq. of Title
8 22 of the Oklahoma Statutes, shall be commenced within five (5)
9 years after the discovery of the crime. For purposes of this
10 subsection, "discovery" means the date upon which the crime is made
11 known to anyone other than a person involved in the activity.

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

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

19 SECTION 6. AMENDATORY 22 O.S. 2001, Section 305.1, is
20 amended to read as follows:

21 Section 305.1 Before the filing of an information against a
22 person accused of committing a crime, the State of Oklahoma, through
23 its district attorney, may agree with an accused to defer the filing

1 of a criminal information for a period not to exceed ~~two (2)~~ three
2 (3) years.

3 The State of Oklahoma may include any person in a deferred
4 prosecution program if it is in the best interests of the accused
5 and not contrary to the public interest. Each district attorney
6 shall adopt and promulgate guidelines which shall indicate what
7 factors shall be considered in including an accused in the deferred
8 prosecution program. The guidelines shall insure that the State of
9 Oklahoma considers in each case at least the following factors:

- 10 1. Whether the State of Oklahoma has sufficient evidence to
11 achieve conviction;
- 12 2. The nature of the offense with priority given to first
13 offenders and nonviolent crimes;
- 14 3. Any special characteristics of the accused;
- 15 4. Whether the accused will cooperate and benefit from a
16 deferred prosecution program;
- 17 5. Whether available programs are appropriate to the accused
18 person's needs;
- 19 6. Whether the services for the accused are more readily
20 available from the community or from the corrections system;
- 21 7. Whether the accused constitutes a substantial danger to
22 others;
- 23 8. The impact of the deferred prosecution on the community;

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

3 10. The opinions of the victim; and

4 11. Any mitigating or aggravating circumstances.

5 SECTION 7. AMENDATORY 22 O.S. 2001, Section 982a, is
6 amended to read as follows:

7 Section 982a. A. Any time within twelve (12) months after a
8 sentence is imposed or within twelve (12) months after probation has
9 been revoked, the court imposing sentence or revocation of probation
10 may modify such sentence or revocation by directing that another
11 penalty be imposed, if the court is satisfied that the best
12 interests of the public will not be jeopardized. This section shall
13 not apply to convicted felons who have been in confinement in any
14 state prison system for any previous felony conviction during the
15 ten-year period preceding the date that the sentence this section
16 applies to was imposed. Further, without the consent of the
17 district attorney, this section shall not apply to sentences imposed
18 to a plea agreement.

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

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

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

15 SECTION 8. AMENDATORY 22 O.S. 2001, Section 1015, as
16 amended by Section 1, Chapter 118, O.S.L. 2004 (22 O.S. Supp. 2006,
17 Section 1015), is amended to read as follows:

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

21 B. The judgment of execution shall take place under the
22 authority of the Director of the Oklahoma Department of Corrections
23 and the warden must be present along with other necessary prison and

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

16 C. In the event the defendant has been sentenced to death in
17 one or more criminal proceedings in this state, or has been
18 sentenced to death in this state and by one or more courts of
19 competent jurisdiction in another state or pursuant to federal
20 authority, or any combination thereof, and this state has priority
21 to execute the defendant, the warden must invite the prosecuting
22 attorney or his or her designee, the judge, and the chief law
23 enforcement official from each jurisdiction where any death sentence

1 has issued. The above mentioned officials shall be allowed to
2 witness the execution or view the execution by closed circuit
3 television as determined by the Director of the Department of
4 Corrections.

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

19 Immediate family members may request individuals not directly
20 related to the deceased victim but who serve a close supporting role
21 or professional role to the deceased victim or an immediate family
22 member, including, but not limited to, a minister or licensed
23 counselor. The warden in consultation with the Director shall

1 approve or disapprove such requests. Provided further, the
2 Department may set a limit on the number of witnesses or viewers
3 within occupancy limits.

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

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

1 SECTION 9. AMENDATORY 22 O.S. 2001, Section 1161, as
2 amended by Section 1, Chapter 188, O.S.L. 2004 (22 O.S. Supp. 2006,
3 Section 1161), is amended to read as follows:

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

8 2. When in any criminal action by indictment or information,
9 the defense of insanity is raised, but the defendant is not
10 acquitted on the ground that the defendant was insane at the time of
11 the commission of the crime charged, an issue concerning such
12 defense may be raised on appeal. If the appellate court finds
13 relief is required, the appellate court shall not have authority to
14 modify the judgment or sentence, but will only have the authority to
15 order a new trial or order resentencing without recommendations to
16 sentencing.

17 3. When in any criminal action by indictment or information the
18 defense of insanity is interposed either singly or in conjunction
19 with some other defense, the jury shall state in the verdict, if it
20 is one of acquittal, whether or not the defendant is acquitted on
21 the ground of insanity. When the defendant is acquitted on the
22 ground that the defendant was insane at the time of the commission
23 of the crime charged, the person shall not be discharged from

1 custody until the court has made a determination that the person is
2 not presently dangerous to the public peace and safety because the
3 person is a person requiring treatment as defined in Section 1-103
4 of Title 43A of the Oklahoma Statutes.

5 B. 1. To assist the court in its determination, the court
6 shall immediately issue an examination order and specify the state
7 hospital for the mentally ill in which the person is to be
8 hospitalized. Upon the issuance of the order, the sheriff shall
9 deliver the person to the designated hospital for the mentally ill
10 where the person shall remain hospitalized for a period of not less
11 than thirty (30) days.

12 2. Within forty-five (45) days of such hospitalization, a
13 hearing shall be conducted by the court to ascertain whether the
14 person is presently dangerous to the public peace or safety because
15 the person is a person requiring treatment as defined in Section 1-
16 103 of Title 43A of the Oklahoma Statutes or, if not, is in need of
17 continued supervision as a result of unresolved symptoms of mental
18 illness or a history of treatment noncompliance. During the
19 required period of hospitalization the Department of Mental Health
20 and Substance Abuse Services shall have the person examined by two
21 qualified psychiatrists or one such psychiatrist and one qualified
22 clinical psychologist whose training and experience enable the

1 professional to form expert opinions regarding mental illness,
2 competency, dangerousness and criminal responsibility.

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

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

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

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

21 (2) if not believed to be presently dangerous to the
22 public peace or safety, the person is in need of
23 continued supervision as a result of unresolved

1 symptoms of mental illness or a history of
2 treatment noncompliance.

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

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

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

19 E. If the court finds the person is not presently dangerous to
20 the public peace or safety because the person is a person requiring
21 treatment pursuant to the provisions of Section 1-103 of Title 43A
22 of the Oklahoma Statutes, but is in need of continued supervision as

1 a result of unresolved symptoms of mental illness or a history of
2 treatment noncompliance, the court may:

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

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

9 3. Order conditional release, as set forth in subsection H of
10 this section.

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

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

1 a. Therapeutic visits may occur if approved by a
2 Department of Mental Health and Substance Abuse
3 Services' Forensic Review Board and the Commissioner
4 or designee. The Forensic Review Board shall submit
5 its recommendation to the court, district attorney of
6 the county where the person was found not guilty by
7 reason of insanity, the person's trial counsel and the
8 person at least fourteen (14) days prior to the
9 scheduled visit.

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

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

1 discharge to the court, the district attorney and the patient
2 advocate general of the Department of Mental Health and Substance
3 Abuse Services.

4 G. Upon motion by the district attorney a subsequent hearing
5 shall be conducted by the court to ascertain if the person is
6 presently dangerous to the public peace and safety because the
7 person is a person requiring treatment as defined in Section 1-103
8 of Title 43A of the Oklahoma Statutes. This hearing shall be
9 conducted under the same procedure as the first hearing and must
10 occur not less than ten (10) days before the scheduled release. If
11 the court determines that the person continues to be presently
12 dangerous to the public peace and safety because the person is a
13 person requiring treatment as defined in Section 1-103 of Title 43A
14 of the Oklahoma Statutes, it shall order the return of the person to
15 the hospital for additional treatment.

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

19 2. Upon an examiner's recommendation for conditional release, a
20 written plan for outpatient treatment, including recommendations
21 from the examiner, shall be filed with the court, district attorney,
22 the person's trial counsel, and the person. In its order of
23 conditional release, the court shall specify conditions of release

1 and shall direct the appropriate agencies or persons to submit
2 annual reports regarding the person's compliance with the conditions
3 of release and progress in treatment.

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

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

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

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

1 oath if the agency or individual believes that the
2 person has failed to comply with the conditions of
3 release or that such person has progressed to the
4 point that inpatient care is appropriate.

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

8 c. Hearing shall be conducted within three (3) days,
9 excluding holidays and weekends, after the person is
10 returned to the forensic unit of the state hospital to
11 determine if the person has violated the conditions of
12 release, or if full-time hospitalization is the least
13 restrictive alternative consistent with the person's
14 needs and the need for public safety. Notice of the
15 hearing shall be issued, at least twenty-four (24)
16 hours before the hearing, to the hospital
17 superintendent, the person, trial counsel for the
18 person, and the patient advocate general of the
19 Department of Mental Health and Substance Abuse
20 Services. If the person requires hospitalization
21 because of a violation of the conditions of release or
22 because of progression to the point that inpatient

1 care is appropriate, the court may then modify the
2 conditions of release.

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

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

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

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

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

- 17 a. assault, battery, or assault and battery with a
18 dangerous weapon;
- 19 b. aggravated assault and battery on a police officer,
20 sheriff, highway patrolman, or any other officer of
21 the law;
- 22 c. poisoning with intent to kill;
- 23 d. shooting with intent to kill;

- 1 e. assault with intent to kill;
- 2 f. assault with intent to commit a felony;
- 3 g. assaults while masked or disguised;
- 4 h. murder in the first degree;
- 5 i. murder in the second degree;
- 6 j. manslaughter in the first degree;
- 7 k. manslaughter in the second degree;
- 8 l. kidnapping;
- 9 m. burglary in the first degree;
- 10 n. burglary with explosives;
- 11 o. kidnapping for extortion;
- 12 p. maiming;
- 13 q. robbery;
- 14 r. robbery in the first degree;
- 15 s. robbery in the second degree;
- 16 t. armed robbery;
- 17 u. robbery by two (2) or more persons;
- 18 v. robbery with dangerous weapon or imitation firearm;
- 19 w. child beating;
- 20 x. wiring any equipment, vehicle or structure with
- 21 explosives;
- 22 y. forcible sodomy;
- 23 z. rape in the first degree;

- 1 aa. rape in the second degree;
- 2 bb. rape by instrumentation;
- 3 cc. lewd or indecent proposition or lewd or indecent act
- 4 with a child;
- 5 dd. use of a firearm or offensive weapon to commit or
- 6 attempt to commit a felony;
- 7 ee. pointing firearms;
- 8 ff. rioting;
- 9 gg. inciting to riot;
- 10 hh. arson in the first degree;
- 11 ii. injuring or burning public buildings;
- 12 jj. sabotage;
- 13 kk. criminal syndicalism;
- 14 ll. extortion;
- 15 mm. obtaining signature by extortion;
- 16 nn. seizure of a bus, discharging firearm or hurling
- 17 missile at bus; ~~or~~
- 18 oo. mistreatment of a mental patient; or
- 19 pp. using a vehicle to facilitate the discharge of a
- 20 weapon pursuant to Section 652 of Title 21 of the
- 21 Oklahoma Statutes.

22 SECTION 11. This act shall become effective July 1, 2007.

1 SECTION 12. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO
6 PASS, As Amended and Coauthored.