



1           2. When in any criminal action by indictment or information the  
2 defense of insanity is interposed either singly or in conjunction  
3 with some other defense, the jury shall state in the verdict, if it  
4 is one of acquittal, whether or not the defendant is acquitted on  
5 the ground of insanity. When the defendant is acquitted on the  
6 ground that the defendant was insane at the time of the commission  
7 of the crime charged, the person shall not be discharged from  
8 custody until the court has made a determination that the person is  
9 not presently dangerous to the public peace and safety because the  
10 person is a person requiring treatment as defined in Section 1-103  
11 of Title 43A of the Oklahoma Statutes.

12           B. 1. To assist the court in its determination, the court  
13 shall immediately issue an examination order and specify the state  
14 hospital for the mentally ill in which the person is to be  
15 hospitalized. Upon the issuance of the order, the sheriff shall  
16 deliver the person to the designated hospital for the mentally ill  
17 where the person shall remain hospitalized for a period of not less  
18 than thirty (30) days.

19           2. Within forty-five (45) days of such hospitalization, a  
20 hearing shall be conducted by the court to ascertain whether the  
21 person is presently dangerous to the public peace or safety because  
22 the person is a person requiring treatment as defined in Section 1-  
23 103 of Title 43A of the Oklahoma Statutes or, if not, is in need of

1 continued supervision as a result of unresolved symptoms of mental  
2 illness or a history of treatment noncompliance. During the  
3 required period of hospitalization the Department of Mental Health  
4 and Substance Abuse Services shall have the person examined by two  
5 qualified psychiatrists or one such psychiatrist and one qualified  
6 clinical psychologist whose training and experience enable the  
7 professional to form expert opinions regarding mental illness,  
8 competency, dangerousness and criminal responsibility.

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

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

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

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

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

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

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

21 2. If the court finds that the person is presently dangerous to  
22 the public peace and safety, it shall commit the person to the  
23 custody of the Department of Mental Health and Substance Abuse

1 Services. The person shall then be subject to discharge pursuant to  
2 the procedure set forth in Title 43A of the Oklahoma Statutes.

3 E. If the court finds the person is not presently dangerous to  
4 the public peace or safety because the person is a person requiring  
5 treatment pursuant to the provisions of Section 1-103 of Title 43A  
6 of the Oklahoma Statutes, but is in need of continued supervision as  
7 a result of unresolved symptoms of mental illness or a history of  
8 treatment noncompliance, the court may:

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

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

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

17 F. There is hereby created a Forensic Review Board to be  
18 composed of five (5) members appointed by the Governor with the  
19 advice and consent of the Senate. The Board members shall serve for  
20 a term of five (5) years, except for those first appointed to the  
21 Board, who shall serve as follows: one shall serve for a term  
22 ending December 31, 2008, one shall serve for a term ending December

1 31, 2009, one shall serve for a term ending December 31, 2010, and  
2 one shall serve for a term ending December 31, 2011.

3 1. The membership of the Board shall be composed of:

4 a. Three (3) licensed mental health professionals with  
5 experience in treating mental illness, at least one  
6 (1) of whom is licensed as a Doctor of Medicine, a  
7 Doctor of Osteopathy, or a licensed clinical  
8 psychologist and shall be appointed from a list of  
9 five (5) names submitted by the Department of Mental  
10 Health and Substance Abuse Services;

11 b. One (1) attorney licensed to practice in this state  
12 and who shall be appointed from a list of not less  
13 than three (3) names submitted by the Board of  
14 Governors of the Oklahoma Bar Association. Such  
15 member shall be prohibited while serving on the Board  
16 from representing in the courts of this state any  
17 person charged with a felony offense; and

18 c. One (1) at-large member.

19 2. The Board shall meet as necessary to determine which  
20 individuals confined with the Department of Mental Health and  
21 Substance Abuse Services are eligible for therapeutic visits,  
22 conditional release or discharge and whether the Board chooses to

1 make such recommendations to the court of the county where such  
2 individuals were found not guilty by reason of insanity.

3 3. Board meetings shall not be subject to the Open Meetings  
4 Act. Other than Board members, only the following individuals shall  
5 be permitted to attend Board meetings:

6 a. The individual the Board is considering for  
7 therapeutic visits, conditional release or discharge,  
8 his or her treatment advocate, and members of his or  
9 her treatment team;

10 b. The Commissioner of Mental Health and Substance Abuse  
11 Services or designee;

12 c. The Advocate General for the Department of Mental  
13 Health and Substance Abuse Services or designee;

14 d. The Executive Director of the Oklahoma Forensic Center  
15 or designee;

16 e. The General Counsel for the Department of Mental  
17 Health and Substance Abuse Services or designee; and

18 f. Any person the Board and Commissioner of Mental Health  
19 and Substance Abuse Services permits to be present.

20 4. The Department of Mental Health and Substance Abuse Services  
21 shall provide administrative staff to the Board and shall provide  
22 transportation to Board meetings for individuals being reviewed at  
23 such meetings. The Board shall promulgate rules concerning the

1 granting and structure of therapeutic visits, conditional release  
2 and discharge.

3 ~~4. 5.~~ For purposes of this subsection, "therapeutic visit"  
4 means a supervised or unsupervised scheduled time period off campus  
5 which provides for progressive tests of the consumer's ability to  
6 maintain and demonstrate coping skills. ~~The Department shall~~  
7 ~~promulgate rules concerning the granting and structure of these~~  
8 ~~visits.~~

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

15 ~~a. Therapeutic visits may occur if approved by a~~  
16 ~~Department of Mental Health and Substance Abuse~~  
17 ~~Services' Forensic Review Board and the Commissioner~~  
18 ~~or designee.~~

19 6. The Forensic Review Board shall submit its any  
20 recommendation for therapeutic visit, conditional release or  
21 discharge to the court, and district attorney of the county where  
22 the person was found not guilty by reason of insanity, the person's  
23 trial counsel, the Department of Mental Health and Substance Abuse

1 Services and the person at least fourteen (14) days prior to the  
2 scheduled visit. ~~b.~~ The district attorney may file an objection to  
3 ~~the~~ a recommendation for a therapeutic visit within ten (10) days of  
4 receipt of the notice. If an objection is filed, the therapeutic  
5 visit is stayed until a hearing is held. The court shall hold a  
6 hearing not less than ten (10) days following an objection to  
7 determine whether the therapeutic visit is necessary for treatment,  
8 and if necessary, the nature and extent of the visit.

9 ~~3.~~ 7. During the period of hospitalization the ~~Superintendent~~  
10 Department of Mental Health and Substance Abuse Services shall  
11 submit an annual report on the status of the person to the court,  
12 the district attorney and the patient advocate general of the  
13 Department of Mental Health and Substance Abuse Services. ~~Not less~~  
14 ~~than twenty (20) days prior to the scheduled release of the person~~  
15 ~~the Superintendent shall deliver a written notice of the proposed~~  
16 ~~discharge to the court, the district attorney and the patient~~  
17 ~~advocate general of the Department of Mental Health and Substance~~  
18 ~~Abuse Services.~~

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

1 requiring treatment as defined in Section 1-103 of Title 43A of the  
2 Oklahoma Statutes. This hearing shall be conducted under the same  
3 procedure as the first hearing and must occur not less than ten (10)  
4 days ~~before the scheduled release~~ following the motion or request of  
5 the Board.

6 1. If the court determines that the person continues to be  
7 presently dangerous to the public peace and safety because the  
8 person is a person requiring treatment as defined in Section 1-103  
9 of Title 43A of the Oklahoma Statutes, it shall order the return of  
10 the person to the hospital for additional treatment.

11 ~~H. 1. Conditional~~ 2. If the court determines that the person  
12 is not dangerous, subject to certain conditions, the court may  
13 conditionally release ~~may be ordered for persons adjudicated not~~  
14 ~~guilty by reason of insanity who are not believed to be presently~~  
15 ~~dangerous to the public peace or safety.~~ the person subject to the  
16 following:

17 ~~2. Upon an examiner's~~ a. The Board has made a recommendation  
18 for conditional release, including a written plan for outpatient  
19 treatment, ~~including recommendations from the examiner, shall be~~  
20 ~~filed with the court, district attorney, the person's trial counsel,~~  
21 ~~and the person~~ and a list of recommendations for the court to place  
22 as conditions on the release.

1        b. In its order of conditional release, the court shall specify  
2 conditions of release and shall direct the appropriate agencies or  
3 persons to submit annual reports regarding the person's compliance  
4 with the conditions of release and progress in treatment.

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

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

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

22        ~~6.~~ ~~a.~~ e. Any agency or individual involved in providing  
23 treatment with regard to the person's conditional

1 release plan may prepare and file an affidavit under  
2 oath if the agency or individual believes that the  
3 person has failed to comply with the conditions of  
4 release or that such person has progressed to the  
5 point that inpatient care is appropriate.

6 ~~b.~~ (1) Any peace officer who receives such an affidavit  
7 shall take the person into protective custody and  
8 return the person to the forensic unit of the state  
9 hospital.

10 ~~e. Hearing~~ (2) A hearing shall be conducted within three  
11 (3) days, excluding holidays and weekends, after the  
12 person is returned to the forensic unit of the state  
13 hospital to determine if the person has violated the  
14 conditions of release, or if full-time hospitalization  
15 is the least restrictive alternative consistent with  
16 the person's needs and the need for public safety.  
17 Notice of the hearing shall be issued, at least  
18 twenty-four (24) hours before the hearing, to the  
19 hospital superintendent, the person, trial counsel for  
20 the person, and the patient advocate general of the  
21 Department of Mental Health and Substance Abuse  
22 Services. If the person requires hospitalization  
23 because of a violation of the conditions of release or

1                   because of progression to the point that inpatient  
2                   care is appropriate, the court may then modify the  
3                   conditions of release.

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

9           ~~F. Additional hearings may be conducted upon motion by the~~  
10 ~~district attorney under the same provisions as described in this~~  
11 ~~section.~~

12           SECTION 2.           AMENDATORY           43A O.S. 2001, Section 2-202, as  
13 last amended by Section 8, Chapter 150, O.S.L. 2005 (43A O.S. Supp.  
14 2006, Section 2-202), is amended to read as follows:

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

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

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

4 1. To appoint, with the consent of the Board, an executive  
5 director of each facility within the Department, and fix the  
6 qualifications, duties and compensation of the executive directors;  
7 to counsel with the various executive directors about facility needs  
8 and budget requests; and to prepare and submit for appropriate  
9 legislative action budget requests sufficient to carry on the  
10 functions of the Department. These budget requests shall be  
11 submitted to the Board for its recommendations before being  
12 submitted for legislative action;

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

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

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

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

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

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

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

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

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

9 a. The Commissioner or a designee of the Commissioner may  
10 establish specific hours for consumer admissions at  
11 each facility.

12 b. The Commissioner or a designee of the Commissioner may  
13 delay inpatient admissions when such admissions would  
14 cause facilities to exceed their authorized capacity.

15 c. Consumers may be transferred from one facility to  
16 another within the Department on the authority of the  
17 Commissioner as provided for in the Mental Health Law.

18 d. Permanent transfer of a consumer may be made when it  
19 is apparent that the general welfare, care, and  
20 treatment of the consumer can be more effectively  
21 provided at another facility, provided the parents or  
22 guardian are notified as soon as possible of the  
23 transfer.

1 e. Temporary transfer of a consumer may be made in order  
2 that a consumer may have the advantage of special  
3 services not available at the facility of the present  
4 residence of the consumer.

5 f. Requests for transfer shall be initiated by the  
6 executive director of the facility in which the  
7 consumer resides.

8 g. Sufficient supporting information from the records of  
9 the consumer shall be submitted by the executive  
10 director to the Commissioner to warrant a decision as  
11 to the advisability of the transfer;

12 9. To call meetings of the executive directors of the  
13 facilities in the Department, and act as chair of such meetings, to  
14 discuss common problems in order to obtain uniformity and bring  
15 about coordination of the facilities for the maximum service to the  
16 state. Called meetings may or may not be held jointly with the  
17 Board;

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

1           a.    The Board of Psychiatric Examiners shall be composed  
2                   of the Commissioner and two members selected by the  
3                   Board.  Members of the Board of Psychiatric Examiners  
4                   shall be selected from persons who are qualified  
5                   examiners according to the Mental Health Law.

6           b.    The Commissioner may designate a third qualified  
7                   examiner to act as chair when circumstances warrant  
8                   and when the Commissioner deems it necessary;

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

16           a.    The Commissioner shall not prevail upon relatives or  
17                   friends of such mentally ill person or any other  
18                   person to defray transfer expenses.

19           b.    Mentally ill persons who are being cared for at public  
20                   expense in hospitals for mentally ill or facilities of  
21                   other states, other than persons who have been  
22                   transferred from penal institutions and the terms of  
23                   whose sentences to such penal institutions shall not

1           have expired, and who are citizens or residents of  
2           this state, may be transferred at the expense of such  
3           other states to similar facilities in this state.

4           c.   Removal of a nonresident to the nonresident's state  
5           may be authorized by the Commissioner and all expenses  
6           of such transfer shall be taken from the Travel Fund  
7           of the facility if the transfer is to be at public  
8           expense.

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

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

19          13. To utilize the services of employees of the Department of  
20          Central Services, the State Department of Health, and the Department  
21          of Human Services when authorized by the director or commissioner  
22          thereof. When employees of those agencies are used, the

1 Commissioner of Mental Health and Substance Abuse Services may  
2 authorize payment of their traveling expenses as provided by law;

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

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

- 10 a. specific information regarding the number of consumers  
11 admitted, treated, and discharged,  
12 b. the methods of treatment used and an appraisal of the  
13 success thereof,  
14 c. the financial condition and needs of each facility in  
15 the Department,  
16 d. any long-range plans or recommendations for the  
17 utilization and improvement of facilities, equipment,  
18 and personnel and for the care and treatment of  
19 consumers,  
20 e. any recommendations requiring legislation, and  
21 f. major findings, in summarized form, obtained by visits  
22 made pursuant to the provisions of paragraph 6 of this  
23 section;

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

4           a. The authority of designated employees shall be limited  
5 to:

6           (1) maintaining custody of consumers in facilities,

7           (2) maintaining security or performing functions

8                 similar to those performed by correctional

9                 officers or other security personnel for

10                Department of Corrections inmates housed in

11                mental health facilities,

12           (3) preventing attempted escapes, and

13           (4) pursuing and returning court committed consumers

14                and Department of Corrections inmates who have

15                escaped from Department facilities.

16           b. The powers and duties of peace officers may be  
17 exercised for the purpose of maintaining custody of  
18 any consumer being transported within the state and  
19 outside the State of Oklahoma pursuant to the  
20 authority of the Interstate Compact on Mental Health.

21           c. To become qualified for designation as a peace officer  
22 pursuant to this section, an employee shall meet the  
23 training and screening requirements of the Department

1 of Corrections pursuant to subparagraphs a through g  
2 of paragraph 2 of subsection A of Section 510 of Title  
3 57 of the Oklahoma Statutes and be of good moral  
4 character;

5 17. ~~To establish a Forensics Review Board to annually review~~  
6 ~~the case of every consumer ordered to the custody of the Department~~  
7 ~~through a "not guilty by reason of insanity" verdict. The Forensics~~  
8 ~~Review Board shall be composed of three (3) licensed mental health~~  
9 ~~professionals, at least one of whom is licensed as a Doctor of~~  
10 ~~Medicine, a Doctor of Osteopathy, or a licensed clinical~~  
11 ~~psychologist, who shall be selected by the Commissioner; and~~

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

14 SECTION 3. This act shall become effective November 1, 2007.

15 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated  
16 2-15-07 - DO PASS, As Coauthored.