

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 909

By: Crain

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5  
6 AS INTRODUCED

7 An Act relating to mental health and substance abuse  
8 services; amending 22 O.S. 2001, Section 1161, as  
9 amended by Section 1, Chapter 188, O.S.L. 2004 (22  
10 O.S. Supp. 2006, Section 1161), which relates to  
11 discharge procedure; modifying procedures for orders  
12 for examination of certain persons; allowing the  
13 administration of certain treatment under specified  
14 circumstances; creating Forensic Review Board;  
15 stating composition of Board; establishing length of  
16 certain terms; establishing duties of Board;  
17 exempting Board from Open Meetings Act; establishing  
18 guidelines for meetings of Board; establishing  
19 procedures upon specified Board recommendations;  
20 authorizing certain release upon specified  
21 determination; requiring discharge upon certain  
22 determination; amending 43A O.S. 2001, Section 2-202,  
23 as last amended by Section 8, Chapter 150, O.S.L.  
24 2005 (43A O.S. Supp. 2006, Section 2-202), which  
relates to powers and duties of Commissioner;  
deleting certain duty; and providing an effective  
date.

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

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

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

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

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

23 2. Within forty-five (45) days of such hospitalization, a  
24 hearing shall be conducted by the court to ascertain whether the

1 person is presently dangerous to the public peace or safety because  
2 the person is a person requiring treatment as defined in Section 1-  
3 103 of Title 43A of the Oklahoma Statutes or, if not, is in need of  
4 continued supervision as a result of unresolved symptoms of mental  
5 illness or a history of treatment noncompliance. During the  
6 required period of hospitalization the Department of Mental Health  
7 and Substance Abuse Services shall have the person examined by two  
8 qualified psychiatrists or one such psychiatrist and one qualified  
9 clinical psychologist whose training and experience enable the  
10 professional to form expert opinions regarding mental illness,  
11 competency, dangerousness and criminal responsibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ending December 31, 2008, one shall serve for a term ending December  
2 31, 2009, one shall serve for a term ending December 31, 2010, and  
3 one shall serve for a term ending December 31, 2011.

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

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

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

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

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

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

3 ~~1- 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  
24 Services and the person at least fourteen (14) days prior to the

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

8 ~~3.~~ 7. During the period of hospitalization the ~~Superintendent~~  
9 Department of Mental Health and Substance Abuse Services shall  
10 submit an annual report on the status of the person to the court,  
11 the district attorney and the patient advocate general of the  
12 Department of Mental Health and Substance Abuse Services. ~~Not less~~  
13 ~~than twenty (20) days prior to the scheduled release of the person~~  
14 ~~the Superintendent shall deliver a written notice of the proposed~~  
15 ~~discharge to the court, the district attorney and the patient~~  
16 ~~advocate general of the Department of Mental Health and Substance~~  
17 ~~Abuse Services.~~

18 G. Upon motion by the district attorney ~~a subsequent hearing or~~  
19 upon a recommendation for conditional release or discharge by the  
20 Forensic Review Board, the court shall be conducted by the court  
21 conduct a hearing to ascertain if the person is presently dangerous  
22 ~~to the public peace and safety because the person is~~ and a person  
23 requiring treatment as defined in Section 1-103 of Title 43A of the  
24 Oklahoma Statutes. This hearing shall be conducted under the same

1 procedure as the first hearing and must occur not less than ten (10)  
2 days ~~before the scheduled release~~ following the motion or request of  
3 the Board.

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

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

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

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

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

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

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

18       ~~6.~~ ~~a.~~ e. Any agency or individual involved in providing  
19 treatment with regard to the person's conditional  
20 release plan may prepare and file an affidavit under  
21 oath if the agency or individual believes that the  
22 person has failed to comply with the conditions of  
23 release or that such person has progressed to the  
24 point that inpatient care is appropriate.

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

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

22           3. If the court determines that the person is not presently  
23 dangerous to the public peace or safety because the person is a  
24 person requiring treatment, it shall order that the person be

1 discharged from the custody of the Department of Mental Health and  
2 Substance Abuse Services.

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

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

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

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

21 1. To appoint, with the consent of the Board, an executive  
22 director of each facility within the Department, and fix the  
23 qualifications, duties and compensation of the executive directors;  
24 to counsel with the various executive directors about facility needs

1 and budget requests; and to prepare and submit for appropriate  
2 legislative action budget requests sufficient to carry on the  
3 functions of the Department. These budget requests shall be  
4 submitted to the Board for its recommendations before being  
5 submitted for legislative action;

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

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

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

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

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

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

13 7. To authorize other members of the Department to visit the  
14 facilities in the Department. These persons shall have the same  
15 power to inspect the facility and its records and to interview  
16 personnel and consumers as the Commissioner;

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

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- 1 a. The Commissioner or a designee of the Commissioner may  
2 establish specific hours for consumer admissions at  
3 each facility.
- 4 b. The Commissioner or a designee of the Commissioner may  
5 delay inpatient admissions when such admissions would  
6 cause facilities to exceed their authorized capacity.
- 7 c. Consumers may be transferred from one facility to  
8 another within the Department on the authority of the  
9 Commissioner as provided for in the Mental Health Law.
- 10 d. Permanent transfer of a consumer may be made when it  
11 is apparent that the general welfare, care, and  
12 treatment of the consumer can be more effectively  
13 provided at another facility, provided the parents or  
14 guardian are notified as soon as possible of the  
15 transfer.
- 16 e. Temporary transfer of a consumer may be made in order  
17 that a consumer may have the advantage of special  
18 services not available at the facility of the present  
19 residence of the consumer.
- 20 f. Requests for transfer shall be initiated by the  
21 executive director of the facility in which the  
22 consumer resides.
- 23 g. Sufficient supporting information from the records of  
24 the consumer shall be submitted by the executive

1 director to the Commissioner to warrant a decision as  
2 to the advisability of the transfer;

3 9. To call meetings of the executive directors of the  
4 facilities in the Department, and act as chair of such meetings, to  
5 discuss common problems in order to obtain uniformity and bring  
6 about coordination of the facilities for the maximum service to the  
7 state. Called meetings may or may not be held jointly with the  
8 Board;

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

15 a. The Board of Psychiatric Examiners shall be composed  
16 of the Commissioner and two members selected by the  
17 Board. Members of the Board of Psychiatric Examiners  
18 shall be selected from persons who are qualified  
19 examiners according to the Mental Health Law.

20 b. The Commissioner may designate a third qualified  
21 examiner to act as chair when circumstances warrant  
22 and when the Commissioner deems it necessary;

23 11. To keep a list of all nonresidents admitted to a facility  
24 within the Department and to make every effort possible to make

1 arrangements with other states so that mentally ill persons who are  
2 being cared for at public expense in any facility in this state and  
3 who are citizens or residents of such other states may be  
4 transferred at the expense of this state to similar facilities in  
5 such other states.

6 a. The Commissioner shall not prevail upon relatives or  
7 friends of such mentally ill person or any other  
8 person to defray transfer expenses.

9 b. Mentally ill persons who are being cared for at public  
10 expense in hospitals for mentally ill or facilities of  
11 other states, other than persons who have been  
12 transferred from penal institutions and the terms of  
13 whose sentences to such penal institutions shall not  
14 have expired, and who are citizens or residents of  
15 this state, may be transferred at the expense of such  
16 other states to similar facilities in this state.

17 c. Removal of a nonresident to the nonresident's state  
18 may be authorized by the Commissioner and all expenses  
19 of such transfer shall be taken from the Travel Fund  
20 of the facility if the transfer is to be at public  
21 expense.

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

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

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

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

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

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

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

- a. The authority of designated employees shall be limited to:
  - (1) maintaining custody of consumers in facilities,
  - (2) maintaining security or performing functions similar to those performed by correctional officers or other security personnel for Department of Corrections inmates housed in mental health facilities,
  - (3) preventing attempted escapes, and

1 (4) pursuing and returning court committed consumers  
2 and Department of Corrections inmates who have  
3 escaped from Department facilities.

4 b. The powers and duties of peace officers may be  
5 exercised for the purpose of maintaining custody of  
6 any consumer being transported within the state and  
7 outside the State of Oklahoma pursuant to the  
8 authority of the Interstate Compact on Mental Health.

9 c. To become qualified for designation as a peace officer  
10 pursuant to this section, an employee shall meet the  
11 training and screening requirements of the Department  
12 of Corrections pursuant to subparagraphs a through g  
13 of paragraph 2 of subsection A of Section 510 of Title  
14 57 of the Oklahoma Statutes and be of good moral  
15 character;

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

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

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

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