

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1594

5 By: Brecheen of the Senate

6 and

7 Newell of the House

8 **An Act relating to criminal procedure; amending 22**
9 **O.S. 2011, Section 914, which relates to verdicts;**
10 **modifying reference to certain type of verdict;**
11 **amending 22 O.S. 2011, Section 1161, which relates to**
12 **acts of insanity of accused; clarifying certain**
13 **statement directed to persons committing certain**
14 **crimes; and providing an effective date.**

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

16 SECTION 1. AMENDATORY 22 O.S. 2011, Section 914, is
17 amended to read as follows:

18 Section 914. A general verdict upon a plea of not guilty, is
19 either "guilty", or "not guilty", which imports a conviction or
20 acquittal of the offense charged. Upon a plea of a former
21 conviction or acquittal of the same offense, it is either "for the
22 state", or "for the defendant". When the defendant is acquitted on
23 the ground that he was insane at the time of the commission of the
24 act charged, the verdict must be ~~"not guilty by reason of insanity"~~
"guilty but insane". When the defendant is acquitted on the ground

1 of variance between the charge and the proof, the verdict must be
2 "not guilty by reason of variance between charge and proof".

3 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1161, is
4 amended to read as follows:

5 Section 1161. A. 1. An act committed by a person in a state
6 of insanity cannot be punished as a public offense, ~~nor can the;~~
7 provided, however, upon finding that a crime was committed by the
8 person under the circumstances of this paragraph, such pronouncement
9 by a court and any statement by a jury in the verdict shall state
10 the person is "guilty but insane". The person also cannot be tried,
11 sentenced to punishment, or punished for a public offense while such
12 person is insane.

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

22 3. When in any criminal action by indictment or information the
23 defense of insanity is interposed either singly or in conjunction
24 with some other defense, the jury shall state in the verdict, if it

1 is one of acquittal, whether or not the defendant is acquitted on
2 the ground of insanity, but such verdict shall state that the
3 defendant is "guilty but insane". When the defendant is acquitted
4 on the ground that the defendant was insane at the time of the
5 commission of the crime charged, the person shall not be discharged
6 from custody until the court has made a determination that the
7 person is not presently dangerous to the public peace and safety
8 because the person is a person requiring treatment as defined in
9 Section 1-103 of Title 43A of the Oklahoma Statutes.

10 B. 1. To assist the court in its determination, the court
11 shall immediately issue an order for the person to be examined by
12 the Department of Mental Health and Substance Abuse Services at a
13 facility the Department has designated to examine and treat forensic
14 individuals. Upon the issuance of the order, the sheriff shall
15 deliver the person to the designated facility.

16 2. Within forty-five (45) days of the court entering such an
17 order, a hearing shall be conducted by the court to ascertain
18 whether the person is presently dangerous to the public peace or
19 safety because the person is a person requiring treatment as defined
20 in Section 1-103 of Title 43A of the Oklahoma Statutes or, if not,
21 is in need of continued supervision as a result of unresolved
22 symptoms of mental illness or a history of treatment noncompliance.
23 During the required period of hospitalization the Department of
24 Mental Health and Substance Abuse Services shall have the person

1 examined by two qualified psychiatrists or one such psychiatrist and
2 one qualified clinical psychologist whose training and experience
3 enable the professional to form expert opinions regarding mental
4 illness, competency, dangerousness and criminal responsibility.

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

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

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

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

23 (2) if not believed to be presently dangerous to the
24 public peace or safety, the person is in need of

1 continued supervision as a result of unresolved
2 symptoms of mental illness or a history of
3 treatment noncompliance.

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

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

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

20 a. During the period of hospitalization, the Department
21 of Mental Health and Substance Abuse Services may
22 administer or cause to be administered to the person
23 such psychiatric, medical or other therapeutic
24 treatment as in its judgment should be administered.

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

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

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

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

16 3. Order conditional release, as set forth in subsection F of
17 this section.

18 F. There is hereby created a Forensic Review Board to be
19 composed of seven (7) members appointed by the Governor with the
20 advice and consent of the Senate. The Board members shall serve for
21 a term of five (5) years except that for members first appointed to
22 the Board: one shall serve for a term ending December 31, 2008, two
23 shall serve for a term ending December 31, 2009, two shall serve a
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1 term ending December 31, 2010, and two shall serve for a term ending
2 December 31, 2011.

3 1. The Board shall be composed of:

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

11 b. one member who shall be an attorney licensed to
12 practice in this state and shall be appointed from a
13 list of not less than three names submitted to the
14 Governor by the Board of Governors of the Oklahoma Bar
15 Association,

16 c. one member who shall be a retired judge licensed to
17 practice in this state and shall be appointed from a
18 list of not less than three names submitted to the
19 Governor by the Judicial Nominating Committee, and

20 d. one at-large member.

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

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1 (5) any other persons the Board and Commissioner of
2 Mental Health and Substance Abuse Services wish
3 to be present.

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

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

16 d. For purposes of this subsection, "therapeutic visit"
17 means a scheduled time period off campus which
18 provides for progressive tests of the consumer's
19 ability to maintain and demonstrate coping skills.

20 3. The Forensic Review Board shall submit any recommendation
21 for therapeutic visit, conditional release or discharge to the court
22 and district attorney of the county where the person was found ~~not~~
23 guilty ~~by reason of insanity~~ but insane, the person's trial counsel,
24

1 the Department of Mental Health and Substance Abuse Services and the
2 person at least fourteen (14) days prior to the scheduled visit.

3 a. The district attorney may file an objection to a
4 recommendation for a therapeutic visit within ten (10)
5 days of receipt of the notice.

6 b. If an objection is filed, the therapeutic visit is
7 stayed until a hearing is held. The court shall hold
8 a hearing not less than ten (10) days following an
9 objection to determine whether the therapeutic visit
10 is necessary for treatment, and if necessary, the
11 nature and extent of the visit.

12 4. During the period of hospitalization the Department of
13 Mental Health and Substance Abuse Services shall submit an annual
14 report on the status of the person to the court, the district
15 attorney and the patient advocate general of the Department of
16 Mental Health and Substance Abuse Services.

17 G. Upon motion by the district attorney or upon a
18 recommendation for conditional release or discharge by the Forensic
19 Review Board, the court shall conduct a hearing to ascertain if the
20 person is presently dangerous and a person requiring treatment as
21 defined in Section 1-103 of Title 43A of the Oklahoma Statutes.
22 This hearing shall be conducted under the same procedure as the
23 first hearing and must occur not less than ten (10) days following
24 the motion or request by the Forensic Review Board.

1 1. If the court determines that the person continues to be
2 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, it shall order the return of
5 the person to the hospital for additional treatment.

6 2. If the court determines that the person is not dangerous
7 subject to certain conditions, the court may conditionally release
8 the person subject to the following:

9 a. the Forensic Review Board has made a recommendation
10 for conditional release, including a written plan for
11 outpatient treatment and a list of recommendations for
12 the court to place as conditions on the release,

13 b. in its order of conditional release, the court shall
14 specify conditions of release and shall direct the
15 appropriate agencies or persons to submit annual
16 reports regarding the person's compliance with the
17 conditions of release and progress in treatment,

18 c. the person must agree, in writing, that during the
19 period the person is granted conditional release and
20 is subject to the provisions thereof, there shall be
21 free transmission of all pertinent information,
22 including clinical information regarding the person,
23 among the Department of Mental Health and Substance
24 Abuse Services, the appropriate community mental

1 health centers and the appropriate district attorneys,
2 law enforcement and court personnel,

3 d. the court's order placing the person on conditional
4 release shall include notice that the person's
5 conditional release may be revoked upon good cause.
6 The person placed on conditional release shall remain
7 under the supervision of the Department of Mental
8 Health and Substance Abuse Services until the
9 committing court enters a final discharge order. The
10 Department of Mental Health and Substance Abuse
11 Services shall assess the person placed on conditional
12 release annually and shall have the authority to
13 recommend discharge of the person to the Board,

14 e. any agency or individual involved in providing
15 treatment with regard to the person's conditional
16 release plan may prepare and file an affidavit under
17 oath if the agency or individual believes that the
18 person has failed to comply with the conditions of
19 release or that such person has progressed to the
20 point that inpatient care is appropriate.

21 (1) Any peace officer who receives such an affidavit
22 shall take the person into protective custody and
23 return the person to the forensic unit of the
24 state hospital.

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

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

24 SECTION 3. This act shall become effective November 1, 2012.

1 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO
2 PASS, As Amended and Coauthored.

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