

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1214

By: Sharp, Holt, Boggs and
Sykes of the Senate

3

and

4

Wood of the House

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An Act relating to verdicts; amending 22 O.S. 2011,
Section 1161, which relates to acquittal on grounds
9 of insanity; modifying forms of adjudication of
certain persons; authorizing imposition of certain
10 sentences for specified defendants; establishing
requirements for probation of certain defendants;
11 establishing certain reporting requirements;
modifying statutory references; defining terms; and
12 providing an effective date.

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15 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

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"An Act relating to verdicts; amending 22 O.S. 2011,
Section 1161, which relates to acquittal on grounds
19 of insanity; modifying forms of adjudication of
certain persons; authorizing imposition of certain
20 sentences for specified defendants; establishing
requirements for probation of certain defendants;
21 establishing certain reporting requirements;
modifying statutory references; defining terms; and
22 providing an effective date.

23

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

2 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1161, is
3 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~~ mental illness or mental defect
8 shall be adjudicated as guilty with mental defect or as not guilty
9 by reason of mental illness.

10 2. If a person is found guilty with mental defect or enters a
11 plea of guilty with mental defect which is accepted by the court,
12 the court at the time of sentencing shall impose any sentence that
13 could be imposed by law upon a person who is convicted of the same
14 offense, and the person shall serve the sentence in custody of a
15 county jail or the Oklahoma Department of Corrections.

16 3. If a person who is found guilty with mental defect is placed
17 on probation under the jurisdiction of the sentencing court as
18 provided by law, the court shall immediately issue an order for the
19 person to be examined by the Department of Mental Health and
20 Substance Abuse Services. The time and place of such examination
21 shall be determined by the Department. Within forty-five (45) days,
22 the Department shall provide to the court a recommendation of
23 treatment for the person, which shall be made a condition of
24 probation. Reports as specified by the trial judge shall be filed

1 with the probation officer and the sentencing court. Failure to
2 continue treatment, except by agreement with the treating agency and
3 the sentencing court, is grounds for revocation of probation.
4 Treatment shall be provided by an agency of the Department or, with
5 the approval of the sentencing court and at the expense of the
6 person, by private agencies, private physicians or other mental
7 health personnel. A psychiatric report shall be filed with the
8 probation officer and the sentencing court every six (6) months
9 during the period of probation.

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

19 ~~3.~~ 5. When in any criminal action by indictment or information
20 the defense of ~~insanity~~ mental illness is interposed either singly
21 or in conjunction with some other defense, the jury shall state in
22 the verdict, if it is one of acquittal, whether or not the defendant
23 is acquitted on the ground of ~~insanity~~ mental illness. When the
24 defendant is acquitted on the ground that the defendant was ~~insane~~

1 mentally ill at the time of the commission of the crime charged, the
2 person shall not be discharged from custody until the court has made
3 a determination that the person is not ~~presently~~ dangerous to the
4 public peace and safety ~~because the person~~ and is a person requiring
5 treatment ~~as defined in Section 1-103 of Title 43A of the Oklahoma~~
6 ~~Statutes.~~

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

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

1 enable the professional to form expert opinions regarding mental
2 illness, 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 person's
16 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
24

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

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
24

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.

1 2. The Board shall meet as necessary to determine which
2 individuals confined with the Department of Mental Health and
3 Substance Abuse Services are eligible for therapeutic visits,
4 conditional release or discharge and whether the Board wishes to
5 make such a recommendation to the court of the county where the
6 individual was found not guilty by reason of insanity or not guilty
7 by reason of mental illness for those persons adjudicated as such
8 upon or after the effective date of this act.

9 a. Forensic Review Board meetings shall not be considered
10 subject to the Oklahoma Open Meeting Act and are not
11 open to the public. Other than the Forensic Review
12 Board members, only the following individuals shall be
13 permitted to attend Board meetings:

- 14 (1) the individual the Board is considering for
15 therapeutic visits, conditional release or
16 discharge, his or her treatment advocate, and
17 members of his or her treatment team,
- 18 (2) the Commissioner of Mental Health and Substance
19 Abuse Services or designee,
- 20 (3) the Advocate General for the Department of Mental
21 Health and Substance Abuse Services or designee,
- 22 (4) the General Counsel for the Department of Mental
23 Health and Substance Abuse Services or designee,
24 and

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~~ mental illness, the person's trial
24 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.

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 but
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, and

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 H. As used in this section:

1 1. "Antisocial personality disorder" means antisocial
2 personality disorder as defined by the Diagnostic and Statistical
3 Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent
4 editions;

5 2. "Dangerous" means a person who because of mental illness
6 poses a substantial risk of physical harm in the near future to
7 another person or persons. Dangerousness shall be determined by
8 such factors as whether the person has placed another person or
9 persons in a reasonable fear of violent behavior, and medication and
10 treatment compliance;

11 3. "Guilty with mental defect" means the person committed the
12 act and was either unable to understand the nature and consequences
13 of his or her actions or was unable to differentiate right from
14 wrong, and has been diagnosed with antisocial personality disorder
15 which substantially contributed to the act for which the person has
16 been charged;

17 4. "Mental defect" means the person has been diagnosed with
18 antisocial personality disorder which substantially contributed to
19 the act for which the person has been charged;

20 5. "Mental illness" means a substantial disorder of thought,
21 mood, perception, psychological orientation or memory that
22 significantly impairs judgment, behavior, capacity to recognize
23 reality or ability to meet the ordinary demands of life;

1 6. "Not guilty by reason of mental illness" means the person
2 committed the act while mentally ill and was either unable to
3 understand the nature and consequences of his or her actions or was
4 unable to differentiate right from wrong, and has not been diagnosed
5 with antisocial personality disorder which substantially contributed
6 to the act for which the person has been charged; and

7 7. a. "Person requiring treatment" means a person who because
8 of mental illness:

9 (1) poses a substantial risk of physical harm to self
10 as manifested by evidence or serious threats of
11 or attempts at suicide or other significant self-
12 inflicted bodily harm,

13 (2) poses a substantial risk of physical harm to
14 another person or persons as manifested by
15 evidence of violent behavior directed toward
16 another person or persons,

17 (3) has placed another person or persons in
18 reasonable fear of serious physical harm or
19 violent behavior directed toward such person or
20 persons as manifested by serious and immediate
21 threats,

22 (4) is in a condition of severe deterioration such
23 that, without immediate intervention, there
24

1 exists a substantial risk that severe impairment
2 or injury will result to the person, or
3 (5) poses a substantial risk of serious physical
4 injury to self or death as manifested by evidence
5 that the person is unable to provide for and is
6 not providing for his or her basic physical
7 needs.

8 b. The mental health or substance abuse history of the
9 person may be used as part of the evidence to
10 determine whether the person is a person requiring
11 treatment. The mental health or substance abuse
12 history of the person shall not be the sole basis for
13 this determination.

14 c. Unless a person also meets the criteria established in
15 subparagraph a of this paragraph, "person requiring
16 treatment" shall not mean:

17 (1) a person whose mental processes have been
18 weakened or impaired by reason of advanced years,
19 dementia or Alzheimer's disease,

20 (2) a mentally retarded or developmentally disabled
21 person as defined in Title 10 of the Oklahoma
22 Statutes,

23 (3) a person with seizure disorder, or

24 (4) a person with a traumatic brain injury.

1 ENGROSSED SENATE
2 BILL NO. 1214

By: Sharp, Holt, Boggs and
Sykes of the Senate

3 and

4 Wood of the House
5
6

7 An Act relating to verdicts; amending 22 O.S. 2011,
8 Section 1161, which relates to acquittal on grounds
9 of insanity; modifying forms of adjudication of
10 certain persons; authorizing imposition of certain
11 sentences for specified defendants; establishing
12 requirements for probation of certain defendants;
13 establishing certain reporting requirements;
14 modifying statutory references; defining terms; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1161, is
18 amended to read as follows:

19 Section 1161. A. 1. An act committed by a person in a state
20 of ~~insanity cannot be punished as a public offense, nor can the~~
21 ~~person be tried, sentenced to punishment, or punished for a public~~
22 ~~offense while such person is insane~~ mental illness or mental defect
23 shall be adjudicated as guilty with mental defect or as not guilty
24 by reason of mental illness.

2. If a person is found guilty with mental defect or enters
such plea which is accepted by the court, the court at the time of

1 sentencing shall impose any sentence that could be imposed by law
2 upon a person who is convicted of the same offense, and the person
3 shall serve the sentence in custody of a county jail or the Oklahoma
4 Department of Corrections.

5 3. If a person who is found guilty with mental defect is placed
6 on probation under the jurisdiction of the sentencing court as
7 provided by law, the court shall immediately issue an order for the
8 person to be examined by the Department of Mental Health and
9 Substance Abuse Services at a facility the Department has designated
10 to examine and treat forensic individuals. Upon issuance of the
11 order, the sheriff shall deliver the person to the designated
12 facility. Within forty-five (45) days, the Department shall provide
13 to the court a recommendation of treatment for the person, which
14 shall be made a condition of probation. Reports as specified by the
15 trial judge shall be filed with the probation officer and the
16 sentencing court. Failure to continue treatment, except by
17 agreement with the treating agency and the sentencing court, is
18 grounds for revocation of probation. Treatment shall be provided by
19 an agency of the Department or, with the approval of the sentencing
20 court and at the person's expense, by private agencies, private
21 physicians or other mental health personnel. A psychiatric report
22 shall be filed with the probation officer and the sentencing court
23 every six (6) months during the period of probation.

1 4. When in any criminal action by indictment or information,
2 the defense of ~~insanity~~ mental illness is raised, but the defendant
3 is not acquitted on the ground that the defendant was ~~insane~~
4 mentally ill at the time of the commission of the crime charged, an
5 issue concerning such defense may be raised on appeal. If the
6 appellate court finds relief is required, the appellate court shall
7 not have authority to modify the judgment or sentence, but will only
8 have the authority to order a new trial or order resentencing
9 without recommendations to sentencing.

10 ~~3.~~ 5. When in any criminal action by indictment or information
11 the defense of ~~insanity~~ mental illness is interposed either singly
12 or in conjunction with some other defense, the jury shall state in
13 the verdict, if it is one of acquittal, whether or not the defendant
14 is acquitted on the ground of ~~insanity~~ mental illness. When the
15 defendant is acquitted on the ground that the defendant was ~~insane~~
16 mentally ill at the time of the commission of the crime charged, the
17 person shall not be discharged from custody until the court has made
18 a determination that the person is not ~~presently~~ dangerous to the
19 public peace and safety ~~because the person~~ and is a person requiring
20 treatment ~~as defined in Section 1-103 of Title 43A of the Oklahoma~~
21 ~~Statutes.~~

22 B. 1. To assist the court in its determination, the court
23 shall immediately issue an order for the person to be examined by
24 the Department of Mental Health and Substance Abuse Services at a

1 facility the Department has designated to examine and treat forensic
2 individuals. Upon the issuance of the order, the sheriff shall
3 deliver the person to the designated facility.

4 2. Within forty-five (45) days of the court entering such an
5 order, a hearing shall be conducted by the court to ascertain
6 whether the person is ~~presently~~ dangerous to the public peace or
7 safety because the person is a person requiring treatment ~~as defined~~
8 ~~in Section 1-103 of Title 43A of the Oklahoma Statutes~~ or, if not,
9 is in need of continued supervision as a result of unresolved
10 symptoms of mental illness or a history of treatment noncompliance.
11 During the required period of hospitalization the Department of
12 Mental Health and Substance Abuse Services shall have the person
13 examined by two qualified psychiatrists or one such psychiatrist and
14 one qualified clinical psychologist whose training and experience
15 enable the professional to form expert opinions regarding mental
16 illness, competency, dangerousness and criminal responsibility.

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

23 2. If the court is dissatisfied with the reports or if a
24 disagreement on the issue of mental illness and dangerousness exists

1 between the two examiners, the court may designate one or more
2 additional examiners and have them submit their findings and
3 evaluations as specified in paragraph 1 of this subsection.

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

7 (1) the person is ~~presently~~ dangerous to the public
8 peace or safety because the person is a person
9 requiring treatment ~~as defined in Section 1-103~~
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11 (2) if not believed to be ~~presently~~ dangerous to the
12 public peace or safety, the person is in need of
13 continued supervision as a result of unresolved
14 symptoms of mental illness or a history of
15 treatment noncompliance.

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

20 D. 1. If the court finds that the person is not ~~presently~~
21 dangerous to the public peace or safety because the person is a
22 person requiring treatment ~~as defined in Section 1-103 of Title 43A~~
23 ~~of the Oklahoma Statutes~~ and is not in need of continued supervision
24 as a result of unresolved symptoms of mental illness or a history of

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2 from hospitalization.

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4 the public peace and safety, it shall commit the person to the
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6 Services. The person shall then be subject to discharge pursuant to
7 the procedure set forth in Title 43A of the Oklahoma Statutes.

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9 of Mental Health and Substance Abuse Services may
10 administer or cause to be administered to the person
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12 treatment as in its judgment should be administered.

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14 conditional release pursuant to the procedures set
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16 E. If at any time the court finds the person is not ~~presently~~
17 dangerous to the public peace or safety because the person is a
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20 continued supervision as a result of unresolved symptoms of mental
21 illness or a history of treatment noncompliance, the court may:

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

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1 2. Discharge the person, and upon the court's or the district
2 attorney's motion commence civil involuntary commitment proceedings
3 against the person pursuant to the provisions of Title 43A of the
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6 this section.

7 F. There is hereby created a Forensic Review Board to be
8 composed of seven (7) members appointed by the Governor with the
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11 the Board: one shall serve for a term ending December 31, 2008, two
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22 Health and Substance Abuse Services,

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24 practice in this state and shall be appointed from a

1 list of not less than three names submitted to the
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3 Association,

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5 practice in this state and shall be appointed from a
6 list of not less than three names submitted to the
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16 make such a recommendation to the court of the county where the
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18 by reason of mental illness for those persons adjudicated as such
19 upon or after the effective date of this act.

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6 Abuse Services or designee,
- 7 (3) the Advocate General for the Department of Mental
8 Health and Substance Abuse Services or designee,
- 9 (4) the General Counsel for the Department of Mental
10 Health and Substance Abuse Services or designee,
11 and
- 12 (5) any other persons the Board and Commissioner of
13 Mental Health and Substance Abuse Services wish
14 to be present.

15 b. The Department of Mental Health and Substance Abuse
16 Services shall provide administrative staff to the
17 Board to take minutes of meetings and prepare
18 necessary documents and correspondence for the Board
19 to comply with its duties as set forth in this
20 section. The Department of Mental Health and
21 Substance Abuse Services shall also transport the
22 individuals being reviewed to and from the Board
23 meeting site.
24

1 c. The Board shall promulgate rules concerning the
2 granting and structure of therapeutic visits,
3 conditional releases and discharge.

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

8 3. The Forensic Review Board shall submit any recommendation
9 for therapeutic visit, conditional release or discharge to the court
10 and district attorney of the county where the person was found not
11 guilty by reason of ~~insanity~~ mental illness, the person's trial
12 counsel, the Department of Mental Health and Substance Abuse
13 Services and the person at least fourteen (14) days prior to the
14 scheduled visit.

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

18 b. If an objection is filed, the therapeutic visit is
19 stayed until a hearing is held. The court shall hold
20 a hearing not less than ten (10) days following an
21 objection to determine whether the therapeutic visit
22 is necessary for treatment, and if necessary, the
23 nature and extent of the visit.

1 4. During the period of hospitalization the Department of
2 Mental Health and Substance Abuse Services shall submit an annual
3 report on the status of the person to the court, the district
4 attorney and the patient advocate general of the Department of
5 Mental Health and Substance Abuse Services.

6 G. Upon motion by the district attorney or upon a
7 recommendation for conditional release or discharge by the Forensic
8 Review Board, the court shall conduct a hearing to ascertain if the
9 person is ~~presently~~ dangerous and a person requiring treatment ~~as~~
10 ~~defined in Section 1-103 of Title 43A of the Oklahoma Statutes.~~

11 This hearing shall be conducted under the same procedure as the
12 first hearing and must occur not less than ten (10) days following
13 the motion or request by the Forensic Review Board.

14 1. If the court determines that the person continues to be
15 ~~presently~~ dangerous to the public peace and safety because the
16 person is a person requiring treatment ~~as defined in Section 1-103~~
17 ~~of Title 43A of the Oklahoma Statutes,~~ it shall order the return of
18 the person to the hospital for additional treatment.

19 2. If the court determines that the person is not dangerous but
20 subject to certain conditions, the court may conditionally release
21 the person subject to the following:

- 22 a. the Forensic Review Board has made a recommendation
23 for conditional release, including a written plan for
24

1 outpatient treatment and a list of recommendations for
2 the court to place as conditions on the release,

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

8 c. the person must agree, in writing, that during the
9 period the person is granted conditional release and
10 is subject to the provisions thereof, there shall be
11 free transmission of all pertinent information,
12 including clinical information regarding the person,
13 among the Department of Mental Health and Substance
14 Abuse Services, the appropriate community mental
15 health centers and the appropriate district attorneys,
16 law enforcement and court personnel,

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

1 Services shall assess the person placed on conditional
2 release annually and shall have the authority to
3 recommend discharge of the person to the Board, and
4 e. any agency or individual involved in providing
5 treatment with regard to the person's conditional
6 release plan may prepare and file an affidavit under
7 oath if the agency or individual believes that the
8 person has failed to comply with the conditions of
9 release or that such person has progressed to the
10 point that inpatient care is appropriate.

11 (1) Any peace officer who receives such an affidavit
12 shall take the person into protective custody and
13 return the person to the forensic unit of the
14 state hospital.

15 (2) A hearing shall be conducted within three (3)
16 days, excluding holidays and weekends, after the
17 person is returned to the forensic unit of the
18 state hospital to determine if the person has
19 violated the conditions of release, or if full-
20 time hospitalization is the least restrictive
21 alternative consistent with the person's needs
22 and the need for public safety. Notice of the
23 hearing shall be issued, at least twenty-four
24 (24) hours before the hearing, to the hospital

1 superintendent, the person, trial counsel for the
2 person, and the patient advocate general of the
3 Department of Mental Health and Substance Abuse
4 Services. If the person requires hospitalization
5 because of a violation of the conditions of
6 release or because of progression to the point
7 that inpatient care is appropriate, the court may
8 then modify the conditions of release.

9 3. If the court determines that the person is not ~~presently~~
10 dangerous to the public peace or safety because the person is not a
11 person requiring treatment, it shall order that the person be
12 discharged from the custody of the Department of Mental Health and
13 Substance Abuse Services.

14 H. As used in this section:

15 1. "Antisocial personality disorder" means antisocial
16 personality disorder as defined by the Diagnostic and Statistical
17 Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent
18 editions;

19 2. "Dangerous" means a person who because of mental illness
20 poses a substantial risk of physical harm in the near future to
21 another person or persons. Dangerousness shall be determined by
22 such factors as whether the person has placed another person or
23 persons in a reasonable fear of violent behavior, and medication and
24 treatment compliance;

1 3. "Guilty with mental defect" means the person committed the
2 act and was either unable to understand the nature and consequences
3 of his or her actions or was unable to differentiate right from
4 wrong, and has been diagnosed with antisocial personality disorder
5 which substantially contributed to the act for which the person has
6 been charged;

7 4. "Mental defect" means the person has been diagnosed with
8 antisocial personality disorder which substantially contributed to
9 the act for which the person has been charged;

10 5. "Mental illness" means a substantial disorder of thought,
11 mood, perception, psychological orientation or memory that
12 significantly impairs judgment, behavior, capacity to recognize
13 reality or ability to meet the ordinary demands of life;

14 6. "Not guilty by reason of mental illness" means the person
15 committed the act while mentally ill, and was either unable to
16 understand the nature and consequences of his or her actions or was
17 unable to differentiate right from wrong, and has not been diagnosed
18 with antisocial personality disorder; and

19 7. a. "Person requiring treatment" means a person who because
20 of mental illness:

21 (1) poses a substantial risk of physical harm to self
22 as manifested by evidence or serious threats of
23 or attempts at suicide or other significant self-
24 inflicted bodily harm,

1 (2) poses a substantial risk of physical harm to
2 another person or persons as manifested by
3 evidence of violent behavior directed toward
4 another person or persons,

5 (3) has placed another person or persons in
6 reasonable fear of serious physical harm or
7 violent behavior directed towards such person or
8 persons as manifested by serious and immediate
9 threats,

10 (4) is in a condition of severe deterioration such
11 that, without immediate intervention, there
12 exists a substantial risk that severe impairment
13 or injury will result to the person, or

14 (5) poses a substantial risk of serious physical
15 injury to self or death as manifested by evidence
16 that the person is unable to provide for and is
17 not providing for his or her basic physical
18 needs.

19 b. The mental health or substance abuse history of the
20 person may be used as part of the evidence to
21 determine whether the person is a person requiring
22 treatment. The mental health or substance abuse
23 history of the person shall not be the sole basis for
24 this determination.

