ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1214 By: Sharp, Holt, Boggs and Sykes of the Senate

and

Wood of the House

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

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

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

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

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

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

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

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

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

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

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

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

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

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

enable the professional to form expert opinions regarding mental illness, competency, dangerousness and criminal responsibility.

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

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

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

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

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

symptoms of mental illness or a history of treatment noncompliance.

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

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

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

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

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

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

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

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

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

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

term ending December 31, 2010, and two shall serve for a term ending December 31, 2011.

1. The Board shall be composed of:

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

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

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

d. one at-large member.

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

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

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

(1) the individual the Board is considering for therapeutic visits, conditional release or discharge, his or her treatment advocate, and members of his or her treatment team,

(2) the Commissioner of Mental Health and Substance Abuse Services or designee,

(3) the Advocate General for the Department of Mental Health and Substance Abuse Services or designee,

(4) the General Counsel for the Department of Mental Health and Substance Abuse Services or designee, and

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

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

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

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

3. The Forensic Review Board shall submit any recommendation for therapeutic visit, conditional release or discharge to the court and district attorney of the county where the person was found not guilty by reason of ~~insanity~~ mental illness, the person's trial counsel, the Department of Mental Health and Substance Abuse

Services and the person at least fourteen (14) days prior to the scheduled visit.

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

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

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

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

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

2. If the court determines that the person is not dangerous <u>but</u> subject to certain conditions, the court may conditionally release the person subject to the following:

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

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

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

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

d. the court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause. The person placed on conditional release shall remain under the supervision of the Department of Mental Health and Substance Abuse Services until the committing court enters a final discharge order. The Department of Mental Health and Substance Abuse Services shall assess the person placed on conditional release annually and shall have the authority to recommend discharge of the person to the Board, <u>and</u>

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

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

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

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

H. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

exists a substantial risk that severe impairment or injury will result to the person, or

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

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

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

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

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

(3) a person with seizure disorder, or

(4) a person with a traumatic brain injury.

SECTION 2. This act shall become effective November 1, 2016."

Passed the House of Representatives the 19th day of April, 2016.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2016.

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Presiding Officer of the Senate