

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1335

By: Hoskin of the House

and

Sparks of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 1161, as amended by Section 1, Chapter 279, O.S.L. 2016 (22 O.S. Supp. 2016, Section 1161), which relates to acts committed by persons with mental illness or mental defect; updating language; adding definition; authorizing videoconferencing of certain proceedings; 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, as amended by Section 1, Chapter 279, O.S.L. 2016 (22 O.S. Supp. 2016, Section 1161), is amended to read as follows:

Section 1161. A. 1. An act committed by a person in a state of mental illness or mental defect shall be adjudicated as guilty with mental defect or as not guilty by reason of mental illness.

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

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

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

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

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

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

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

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

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

7 (1) the person is dangerous to the public peace or
8 safety because the person is a person requiring
9 treatment, or

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

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

19 D. 1. If the court finds that the person is not dangerous to
20 the public peace or safety because the person is a person requiring
21 treatment and is not in need of continued supervision as a result of
22 unresolved symptoms of mental illness or a history of treatment
23 noncompliance, it shall immediately discharge the person from
24 hospitalization.

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

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

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

15 E. If at any time the court finds the person is not dangerous
16 to the public peace or safety because the person is a person
17 requiring treatment, but is in need of continued supervision as a
18 result of unresolved symptoms of mental illness or a history of
19 treatment noncompliance, the court may:

20 1. Discharge the person pursuant to the procedure set forth in
21 ~~Title 43A of the Oklahoma Statutes~~ this section;

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

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

5 F. There is hereby created a Forensic Review Board to be
6 composed of seven (7) members appointed by the Governor with the
7 advice and consent of the Senate. The Board members shall serve for
8 a term of five (5) years except that for members first appointed to
9 the Board: one shall serve for a term ending December 31, 2008, two
10 shall serve for a term ending December 31, 2009, two shall serve a
11 term ending December 31, 2010, and two shall serve for a term ending
12 December 31, 2011.

13 1. The Board shall be composed of:

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

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

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

7 d. one at-large member.

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

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

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

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 of the consumer to maintain and demonstrate
8 coping skills.

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

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

19 b. If an objection is filed, the therapeutic visit is
20 stayed until a hearing is held. The court shall hold
21 a hearing not less than ten (10) days following an
22 objection to determine whether the therapeutic visit
23 is necessary for treatment, and if necessary, the
24 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 dangerous and a person requiring treatment. This hearing
10 shall be conducted under the same procedure as the first hearing and
11 must occur not less than ten (10) days following the motion or
12 request by the Forensic Review Board.

13 1. If the court determines that the person continues to be
14 dangerous to the public peace and safety because the person is a
15 person requiring treatment, it shall order the return of the person
16 to the hospital for additional treatment.

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

- 20 a. the Forensic Review Board has made a recommendation
21 for conditional release, including a written plan for
22 outpatient treatment and a list of recommendations for
23 the court to place as conditions on the release,
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1 b. in its order of conditional release, the court shall
2 specify conditions of release and shall direct the
3 appropriate agencies or persons to submit annual
4 reports regarding the ~~person's~~ compliance of the
5 person with the conditions of release and progress in
6 treatment,

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

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

1 placed on conditional release annually and shall have
2 the authority to recommend discharge of the person to
3 the Board, and

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

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

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

24 Notice of the hearing shall be issued, at least

1 twenty-four (24) hours before the hearing, to the
2 hospital superintendent, the person, trial
3 counsel for the person, and the patient advocate
4 general of the Department of Mental Health and
5 Substance Abuse Services. If the person requires
6 hospitalization because of a violation of the
7 conditions of release or because of progression
8 to the point that inpatient care is appropriate,
9 the court may then modify the conditions of
10 release.

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

16 H. As used in this section:

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

21 2. "Court" or "sentencing court" means the court sitting in the
22 county where the person has been found to be not guilty by reason of
23 mental illness or guilty with mental defect;
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1 3. "Dangerous" means a person who because of mental illness
2 poses a substantial risk of physical harm in the near future to
3 another person or persons. Dangerousness shall be determined by
4 such factors as whether the person has placed another person or
5 persons in a reasonable fear of violent behavior, and medication and
6 treatment compliance;

7 ~~3.~~ 4. "Guilty with mental defect" means the person committed
8 the act and was either unable to understand the nature and
9 consequences of his or her actions or was unable to differentiate
10 right from wrong, and has been diagnosed with antisocial personality
11 disorder which substantially contributed to the act for which the
12 person has been charged;

13 ~~4.~~ 5. "Mental defect" means the person has been diagnosed with
14 antisocial personality disorder which substantially contributed to
15 the act for which the person has been charged;

16 ~~5.~~ 6. "Mental illness" means a substantial disorder of thought,
17 mood, perception, psychological orientation or memory that
18 significantly impairs judgment, behavior, capacity to recognize
19 reality or ability to meet the ordinary demands of life;

20 ~~6.~~ 7. "Not guilty by reason of mental illness" means the person
21 committed the act while mentally ill and was either unable to
22 understand the nature and consequences of his or her actions or was
23 unable to differentiate right from wrong, and has not been diagnosed
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1 with antisocial personality disorder which substantially contributed
2 to the act for which the person has been charged; and

3 ~~7.~~ 8. a. "Person requiring treatment" means a person who because
4 of mental illness:

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

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

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

18 (4) is in a condition of severe deterioration such
19 that, without immediate intervention, there
20 exists a substantial risk that severe impairment
21 or injury will result to the person, or

22 (5) poses a substantial risk of serious physical
23 injury to self or death as manifested by evidence
24 that the person is unable to provide for and is

1 not providing for his or her basic physical
2 needs.

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

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

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

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

18 (3) a person with seizure disorder, or

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

20 I. Proceedings hereunder may be held in conformance with the
21 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for
22 allowable use of videoconferencing.
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SECTION 2. This act shall become effective November 1, 2017.

56-1-7894 GRS 05/09/17