

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 1335

By: Hoskin of the House

5 and

6 Sparks of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to criminal procedure; amending 22
11 O.S. 2011, Section 1161, as amended by Section 1,
12 Chapter 279, O.S.L. 2016 (22 O.S. Supp. 2016, Section
13 1161), which relates to acts committed by persons
14 with mental illness or mental defect; updating
15 language; adding definition; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1161, as
19 amended by Section 1, Chapter 279, O.S.L. 2016 (22 O.S. Supp. 2016,
20 Section 1161), is amended to read as follows:

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

24 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,

1 the court at the time of sentencing shall impose any sentence that
2 could be imposed by law upon a person who is convicted of the same
3 offense, and the person shall serve the sentence in custody of a
4 county jail or the Oklahoma 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. The time and place of such examination
10 shall be determined by the Department. Within forty-five (45) days,
11 the Department shall provide to the court a recommendation of
12 treatment for the person, which shall be made a condition of
13 probation. Reports as specified by the trial judge shall be filed
14 with the probation officer and the sentencing court. Failure to
15 continue treatment, except by agreement with the treating agency and
16 the sentencing court, is grounds for revocation of probation.
17 Treatment shall be provided by an agency of the Department or, with
18 the approval of the sentencing court and at the expense of the
19 person, by private agencies, private physicians or other mental
20 health personnel. A psychiatric report shall be filed with the
21 probation officer and the sentencing court every six (6) months
22 during the period of probation.

23 4. When in any criminal action by indictment or information,
24 the defense of mental illness is raised, but the defendant is not

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

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

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

24

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

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

19 2. If the court is dissatisfied with the reports or if a
20 disagreement on the issue of mental illness and dangerousness exists
21 between the two examiners, the court may designate one or more
22 additional examiners and have them submit their findings and
23 evaluations as specified in paragraph 1 of this subsection.
24

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

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

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

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

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

23 2. If the court finds that the person is dangerous to the
24 public peace and safety, it shall commit the person to the custody

1 of the Department of Mental Health and Substance Abuse Services.
2 The person shall then be subject to discharge pursuant to the
3 procedure set forth in Title 43A of the Oklahoma Statutes.

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

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

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

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

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

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

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

9 1. The Board shall be composed of:

- 10 a. four licensed mental health professionals with
11 experience in treating mental illness, at least one of
12 whom is licensed as a Doctor of Medicine, a Doctor of
13 Osteopathy, or a licensed clinical psychologist and
14 shall be appointed from a list of seven names
15 submitted to the Governor by the Department of Mental
16 Health and Substance Abuse Services,
- 17 b. one member who shall be an attorney licensed to
18 practice in this state and shall be appointed from a
19 list of not less than three names submitted to the
20 Governor by the Board of Governors of the Oklahoma Bar
21 Association,
- 22 c. one member who shall be a retired judge licensed to
23 practice in this state and shall be appointed from a
24

1 list of not less than three names submitted to the
2 Governor by the Judicial Nominating Committee, and

3 d. one at-large member.

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

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

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

20 (1) the individual the Board is considering for
21 therapeutic visits, conditional release or
22 discharge, his or her treatment advocate, and
23 members of his or her treatment team,
24

(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

1 provides for progressive tests of the ~~consumer's~~
2 ability of the consumer to maintain and demonstrate
3 coping skills.

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

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

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

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

1 G. Upon motion by the district attorney or upon a
2 recommendation for conditional release or discharge by the Forensic
3 Review Board, the court shall conduct a hearing to ascertain if the
4 person is dangerous and a person requiring treatment. This hearing
5 shall be conducted under the same procedure as the first hearing and
6 must occur not less than ten (10) days following the motion or
7 request by the Forensic Review Board.

8 1. If the court determines that the person continues to be
9 dangerous to the public peace and safety because the person is a
10 person requiring treatment, it shall order the return of the person
11 to the hospital for additional treatment.

12 2. If the court determines that the person is not dangerous but
13 subject to certain conditions, the court may conditionally release
14 the person subject to the following:

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

- 1 c. the person must agree, in writing, that during the
2 period the person is granted conditional release and
3 is subject to the provisions thereof, there shall be
4 free transmission of all pertinent information,
5 including clinical information regarding the person,
6 among the Department of Mental Health and Substance
7 Abuse Services, the appropriate community mental
8 health centers and the appropriate district attorneys,
9 law enforcement and court personnel,
- 10 d. the ~~court's~~ order of the court placing the person on
11 conditional release shall include notice that the
12 ~~person's~~ conditional release of the person may be
13 revoked upon good cause. The person placed on
14 conditional release shall remain under the supervision
15 of the Department of Mental Health and Substance Abuse
16 Services until the committing court enters a final
17 discharge order. The Department of Mental Health and
18 Substance Abuse Services shall assess the person
19 placed on conditional release annually and shall have
20 the authority to recommend discharge of the person to
21 the Board, and
- 22 e. any agency or individual involved in providing
23 treatment with regard to the ~~person's~~ conditional
24 release plan of the person may prepare and file an

1 affidavit under oath if the agency or individual
2 believes that the person has failed to comply with the
3 conditions of release or that such person has
4 progressed to the point that inpatient care is
5 appropriate.

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

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

18 Notice of the hearing shall be issued, at least
19 twenty-four (24) hours before the hearing, to the
20 hospital superintendent, the person, trial
21 counsel for the person, and the patient advocate
22 general of the Department of Mental Health and
23 Substance Abuse Services. If the person requires
24 hospitalization because of a violation of the

1 conditions of release or because of progression
2 to the point that inpatient care is appropriate,
3 the court may then modify the conditions of
4 release.

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

10 H. As used in this section:

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

15 2. "Court" or "sentencing court" means the court sitting in the
16 county where the person has been diagnosed as having a mental
17 illness or mental defect;

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

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

7 ~~4.~~ 5. "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.~~ 6. "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.~~ 7. "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 which substantially contributed
19 to the act for which the person has been charged; and

20 ~~7.~~ 8. a. "Person requiring treatment" means a person who because
21 of mental illness:

22 (1) poses a substantial risk of physical harm to self
23 as manifested by evidence or serious threats of
24

1 or attempts at suicide or other significant self-
2 inflicted bodily harm,

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

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

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

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

21 b. The mental health or substance abuse history of the
22 person may be used as part of the evidence to
23 determine whether the person is a person requiring
24 treatment. The mental health or substance abuse

1 history of the person shall not be the sole basis for
2 this determination.

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

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

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

12 (3) a person with seizure disorder, or

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

14 SECTION 2. This act shall become effective November 1, 2017.

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16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL JUSTICE AND
17 CORRECTIONS, dated 02/22/2017 - DO PASS, As Coauthored.
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