

1 STATE OF OKLAHOMA

2 2nd Session of the 60th Legislature (2026)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 2179

By: Haste of the Senate

and

Lawson of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to criminal procedure; amending 22
11 O.S. 2021, Section 1161, as amended by Section 1,
12 Chapter 68, O.S.L. 2025 (22 O.S. Supp. 2025, Section
13 1161), which relates to acts committed by persons in
14 a state of mental illness or defect; modifying
15 definition; requiring recommendation for discharge or
16 conditional release to include certain risk
17 assessment; directing certain reviews of risk
18 assessment; subjecting certain persons to random
19 substance screenings upon order of the court;
20 requiring certain completion and reporting of tests;
21 updating statutory language; and providing an
22 effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 1161, as
amended by Section 1, Chapter 68, O.S.L. 2025 (22 O.S. Supp. 2025,
Section 1161), is amended to read as follows:

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

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

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

1 health personnel. A psychiatric report shall be filed with the
2 probation officer and the sentencing court every six (6) months
3 during the period of probation.

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

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

23 B. 1. To assist the court in its determination, the court
24 shall immediately issue an order for the person to be examined by

1 the Department of Mental Health and Substance Abuse Services at a
2 facility the Department has designated to examine and treat forensic
3 individuals. Upon the issuance of the order, the sheriff shall
4 deliver the person to the designated facility.

5 2. Within forty-five (45) days of the court entering such an
6 order, a hearing shall be conducted by the court to ascertain
7 whether the person is dangerous to the public peace or safety
8 because the person is a person requiring treatment or, if not, is in
9 need of continued supervision as a result of unresolved symptoms of
10 mental illness or a history of treatment noncompliance. During the
11 required period of hospitalization, the Department of Mental Health
12 and Substance Abuse Services shall have the person examined by two
13 qualified psychiatrists or one such psychiatrist and one qualified
14 clinical psychologist whose training and experience enable the
15 professional to form expert opinions regarding mental illness,
16 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 trial counsel of the person a report of
20 the psychiatric examination findings of the person and an evaluation
21 concerning whether the person is dangerous to the public peace or
22 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 present
6 condition of the person as to the issue of 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 this section.

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

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

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

19 1. Discharge the person pursuant to the procedure set forth in
20 this section;

21 2. Discharge the person, and upon the motion of the court or
22 the district attorney commence civil involuntary commitment
23 proceedings against the person pursuant to the provisions of Title
24 43A of the Oklahoma Statutes; or

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

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

11 1. The Board shall be composed of:

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

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

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

6 d. one at-large member.

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

10 2. The Board shall meet as necessary to determine which
11 individuals confined with the Department of Mental Health and
12 Substance Abuse Services are eligible for therapeutic visits,
13 conditional release or discharge and whether the Board wishes to
14 make such a recommendation to the court of the county where the
15 individual was found not guilty by reason of insanity or not guilty
16 by reason of mental illness for those persons adjudicated as such
17 upon or after November 1, 2016.

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

23 (1) the individual the Board is considering for
24 therapeutic visits, conditional release, or

1 discharge, his or her treatment advocate, and
2 members of his or her treatment team,

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

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

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

9 and

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

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

22 c. The Board shall provide notice to the district
23 attorney of the county where the individual was found
24 not guilty by reason of mental illness at least forty-

1 five (45) days before meeting to determine eligibility
2 for therapeutic visits, conditional release, or
3 discharge.

4 d. The Board shall promulgate rules concerning the
5 granting and structure of therapeutic visits,
6 conditional releases, and discharge.

7 e. For purposes of this subsection, "therapeutic visit"
8 means a scheduled time period off campus, accompanied
9 by staff of the Department of Mental Health and
10 Substance Abuse Services or designee provider, which
11 provides for progressive tests of the ability of the
12 consumer to maintain and demonstrate coping skills.

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

20 a. Any recommendation for discharge or conditional
21 release shall be accompanied by a structured clinical
22 violence risk assessment addressing current risk
23 factors, readiness for community placement, and
24 relevant public safety considerations. Such

1 assessment shall be reviewed by the Board prior to
2 submission to the court.

3 b. 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.~~ c. 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 dangerous and a person requiring treatment. This hearing
21 shall be conducted under the same procedure as the first hearing and
22 must occur not less than ten (10) days following the motion or
23 request by the Forensic Review Board. At such hearing, the court
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1 shall review the clinical violence risk assessment submitted with
2 the recommendation.

3 1. If the court determines that the person continues to be
4 dangerous to the public peace and safety because the person is a
5 person requiring treatment, it shall order the return of the person
6 to the hospital for additional treatment.

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

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

14 b. in its order of conditional release, the court shall
15 specify conditions of release and shall direct the
16 appropriate agencies or persons to submit annual
17 reports regarding the compliance of the person with
18 the conditions of release and progress in treatment.
19 If the court orders substance use monitoring among the
20 conditions of release, the person shall be subject to
21 random urine drug and alcohol screening at least twice
22 monthly to assess medication compliance and the
23 presence of alcohol, marijuana, illicit substances, or
24 other non-prescribed dangerous drugs. The screenings

1 shall be completed by the residential care provider
2 facility or a licensed testing agency arranged by the
3 residential care provider, and the results shall be
4 reported to the Department of Mental Health and
5 Substance Abuse Services,

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

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

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

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

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

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

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

13 H. As used in this section:

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

18 2. "Court" or "sentencing court" means the court sitting in the
19 county where the person has been found to be not guilty by reason of
20 mental illness or guilty with mental defect;

21 3. "Dangerous" means a person who because of mental illness
22 poses a substantial risk of physical harm in the near future to
23 another person or persons. Dangerousness shall be determined by
24 such factors as whether the person has placed another person or

1 persons in a reasonable fear of violent behavior, and medication and
2 treatment compliance;

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

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

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

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

22 8. a. "Person requiring treatment" means a person who
23 because of mental illness:
24

- 1 (1) poses a substantial risk of physical harm to self
2 as manifested by evidence or serious threats of
3 or attempts at suicide or other significant self-
4 inflicted bodily harm,
- 5 (2) poses a substantial risk of physical harm to
6 another person or persons as manifested by
7 evidence of violent behavior directed toward
8 another person or persons,
- 9 (3) has placed another person or persons in
10 reasonable fear of serious physical harm or
11 violent behavior directed toward such person or
12 persons as manifested by serious and immediate
13 threats,
- 14 (4) is in a condition of severe deterioration such
15 that, without immediate intervention, there
16 exists a substantial risk that severe impairment
17 or injury will result to the person, or
- 18 (5) poses a substantial risk of serious physical
19 injury to self or death as manifested by evidence
20 that the person is unable to provide for and is
21 not providing for his or her basic physical
22 needs.

23 b. The mental health or substance abuse history of the
24 person may be used as part of the evidence to

1 determine whether the person is a person requiring
2 treatment. The mental health or substance abuse
3 history of the person shall not be the sole basis for
4 this determination.

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

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

11 (2) a person with intellectual or developmental
12 disability as defined in Title 10 of the Oklahoma
13 Statutes,

14 (3) a person with seizure disorder, or

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

16 I. Proceedings hereunder may be held in conformance with the
17 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for
18 allowable use of videoconferencing.

19 SECTION 2. This act shall become effective November 1, 2026.

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21 60-2-3743 DC 3/1/2026 1:22:24 PM