

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1115

By: Holt

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5  
6 AS INTRODUCED

7 An Act relating to insanity defense; amending 21 O.S.  
8 2011, Section 152, which relates to persons capable  
9 of committing crimes; establishing certain  
10 exceptions; amending 22 O.S. 2011, Section 1161,  
11 which relates to acts of insane person not  
12 punishable; establishing certain exceptions; and  
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 21 O.S. 2011, Section 152, is  
16 amended to read as follows:

17 Section 152. All persons are capable of committing crimes,  
18 except those belonging to the following classes:

- 19 1. Children under the age of seven (7) years;
- 20 2. Children over the age of seven (7) years, but under the age  
21 of fourteen (14) years, in the absence of proof that at the time of  
22 committing the act or neglect charged against them, they knew its  
23 wrongfulness;
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1           3. Persons who are impaired by reason of mental retardation  
2 upon proof that at the time of committing the act charged against  
3 them they were incapable of knowing its wrongfulness;

4           4. ~~Mentally~~ Those who commit any crime except murder in the  
5 first or second degree as defined in Sections 701.7 and 701.8 of  
6 this title who are mentally ill persons, and all persons of unsound  
7 mind, including persons temporarily or partially deprived of reason,  
8 upon proof that at the time of committing the act charged against  
9 them they were incapable of knowing its wrongfulness;

10          5. Persons who committed the act, or made the omission charged,  
11 under an ignorance or mistake of fact which disproves any criminal  
12 intent. But ignorance of the law does not excuse from punishment  
13 for its violation;

14          6. Persons who committed the act charged without being  
15 conscious thereof; and

16          7. Persons who committed the act, or make the omission charged,  
17 while under involuntary subjection to the power of superiors.

18          SECTION 2.        AMENDATORY        22 O.S. 2011, Section 1161, is  
19 amended to read as follows:

20          Section 1161. A. 1. ~~An~~ Other than murder in the first or  
21 second degree as defined in Sections 701.7 and 701.8 of Title 21 of  
22 the Oklahoma Statutes, an act committed by a person in a state of  
23 insanity cannot be punished as a public offense, nor can the person  
24

1 be tried, sentenced to punishment, or punished for a public offense  
2 while such person is insane.

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

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

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 presently dangerous to the public peace or  
8 safety because the person is a person requiring treatment as defined  
9 in Section 1-103 of Title 43A of the Oklahoma Statutes or, if not,  
10 is in need of continued supervision as a result of unresolved  
11 symptoms of mental illness or a history of treatment noncompliance.  
12 During the required period of hospitalization the Department of  
13 Mental Health and Substance Abuse Services shall have the person  
14 examined by two qualified psychiatrists or one such psychiatrist and  
15 one qualified clinical psychologist whose training and experience  
16 enable the professional to form expert opinions regarding mental  
17 illness, competency, dangerousness and criminal responsibility.

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

24

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

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

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

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

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

22        D. 1. If the court finds that the person is not presently  
23 dangerous to the public peace or safety because the person is a  
24 person requiring treatment as defined in Section 1-103 of Title 43A

1 of the Oklahoma Statutes and is not in need of continued supervision  
2 as a result of unresolved symptoms of mental illness or a history of  
3 treatment noncompliance, it shall immediately discharge the person  
4 from hospitalization.

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

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

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

18 E. If at any time the court finds the person is not presently  
19 dangerous to the public peace or safety because the person is a  
20 person requiring treatment pursuant to the provisions of Section 1-  
21 103 of Title 43A of the Oklahoma Statutes, but is in need of  
22 continued supervision as a result of unresolved symptoms of mental  
23 illness or a history of treatment noncompliance, the court may:

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

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

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

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

17 1. The Board shall be composed of:

18 a. four licensed mental health professionals with  
19 experience in treating mental illness, at least one of  
20 whom is licensed as a Doctor of Medicine, a Doctor of  
21 Osteopathy, or a licensed clinical psychologist and  
22 shall be appointed from a list of seven names  
23 submitted to the Governor by the Department of Mental  
24 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.

- 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 (1) the individual the Board is considering for
- 2 therapeutic visits, conditional release or
- 3 discharge, his or her treatment advocate, and
- 4 members of his or her treatment team,
- 5 (2) the Commissioner of Mental Health and Substance
- 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.

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, the person's trial counsel, the  
12 Department of Mental Health and Substance Abuse Services and the  
13 person at least fourteen (14) days prior to the scheduled visit.

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

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

23 4. During the period of hospitalization the Department of  
24 Mental Health and Substance Abuse Services shall submit an annual

1 report on the status of the person to the court, the district  
2 attorney and the patient advocate general of the Department of  
3 Mental Health and Substance Abuse Services.

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

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

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

17 2. If the court determines that the person is not dangerous  
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,

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 with the  
5                   conditions of release and progress in treatment,

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 court's order placing the person on conditional  
16                  release shall include notice that the person's  
17                  conditional release may be revoked upon good cause.  
18                  The person placed on conditional release shall remain  
19                  under the supervision of the Department of Mental  
20                  Health and Substance Abuse Services until the  
21                  committing court enters a final discharge order.  The  
22                  Department of Mental Health and Substance Abuse  
23                  Services shall assess the person placed on conditional  
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1 release annually and shall have the authority to  
2 recommend discharge of the person to the Board,  
3 e. any agency or individual involved in providing  
4 treatment with regard to the person's conditional  
5 release plan 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 person's needs  
21 and the need for public safety. Notice of the  
22 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 presently  
9 dangerous to the public peace or safety because the person is not a  
10 person requiring treatment, it shall order that the person be  
11 discharged from the custody of the Department of Mental Health and  
12 Substance Abuse Services.

13 SECTION 3. This act shall become effective November 1, 2016.

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