

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 590

By: Sparks

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6 AS INTRODUCED

7 An Act relating to insanity of accused; amending 22
8 O.S. 2011, Section 1161, as amended by Section 1,
9 Chapter 279, O.S.L. 2016 (22 O.S. Supp. 2016, Section
10 1161), which relates to acts committed by persons in
11 a state of mental illness or mental defect; modifying
12 definitions; and providing an effective date.

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

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

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

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

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

19 4. When in any criminal action by indictment or information,
20 the defense of mental illness is raised, but the defendant is not
21 acquitted on the ground that the defendant was mentally ill at the
22 time of the commission of the crime charged, an issue concerning
23 such defense may be raised on appeal. If the appellate court finds
24 relief is required, the appellate court shall not have authority to

1 modify the judgment or sentence, but will only have the authority to
2 order a new trial or order resentencing without recommendations to
3 sentencing.

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

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

20 2. Within forty-five (45) days of the court entering such an
21 order, a hearing shall be conducted by the court to ascertain
22 whether the person is dangerous to the public peace or safety
23 because the person is a person requiring treatment or, if not, is in
24 need of continued supervision as a result of unresolved symptoms of

1 mental illness or a history of treatment noncompliance. During the
2 required period of hospitalization the Department of Mental Health
3 and Substance Abuse Services shall have the person examined by two
4 qualified psychiatrists or one such psychiatrist and one qualified
5 clinical psychologist whose training and experience enable the
6 professional to form expert opinions regarding mental illness,
7 competency, dangerousness and criminal responsibility.

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

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

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

22 (1) the person is dangerous to the public peace or
23 safety because the person is a person requiring
24 treatment, or

1 (2) if not believed to be dangerous to the public
2 peace or safety, the person is in need of
3 continued supervision as a result of unresolved
4 symptoms of mental illness or a history of
5 treatment noncompliance.

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

10 D. 1. If the court finds that the person is not dangerous to
11 the public peace or safety because the person is a person requiring
12 treatment and is not in need of continued supervision as a result of
13 unresolved symptoms of mental illness or a history of treatment
14 noncompliance, it shall immediately discharge the person from
15 hospitalization.

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

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

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

6 E. If at any time the court finds the person is not dangerous
7 to the public peace or safety because the person is a person
8 requiring treatment, but is in need of continued supervision as a
9 result of unresolved symptoms of mental illness or a history of
10 treatment noncompliance, the court may:

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

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

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

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

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

3 1. The Board shall be composed of:

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

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

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

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

- 14 (1) the individual the Board is considering for
15 therapeutic visits, conditional release or
16 discharge, his or her treatment advocate, and
17 members of his or her treatment team,
- 18 (2) the Commissioner of Mental Health and Substance
19 Abuse Services or designee,
- 20 (3) the Advocate General for the Department of Mental
21 Health and Substance Abuse Services or designee,
- 22 (4) the General Counsel for the Department of Mental
23 Health and Substance Abuse Services or designee,
24 and

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

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

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

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

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

3 a. 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. 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.

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

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

- 8 a. the Forensic Review Board has made a recommendation
9 for conditional release, including a written plan for
10 outpatient treatment and a list of recommendations for
11 the court to place as conditions on the release,
- 12 b. in its order of conditional release, the court shall
13 specify conditions of release and shall direct the
14 appropriate agencies or persons to submit annual
15 reports regarding the person's compliance with the
16 conditions of release and progress in treatment,
- 17 c. the person must agree, in writing, that during the
18 period the person is granted conditional release and
19 is subject to the provisions thereof, there shall be
20 free transmission of all pertinent information,
21 including clinical information regarding the person,
22 among the Department of Mental Health and Substance
23 Abuse Services, the appropriate community mental
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1 health centers and the appropriate district attorneys,
2 law enforcement and court personnel,

3 d. the court's order placing the person on conditional
4 release shall include notice that the person's
5 conditional release may be revoked upon good cause.
6 The person placed on conditional release shall remain
7 under the supervision of the Department of Mental
8 Health and Substance Abuse Services until the
9 committing court enters a final discharge order. The
10 Department of Mental Health and Substance Abuse
11 Services shall assess the person placed on conditional
12 release annually and shall have the authority to
13 recommend discharge of the person to the Board, and

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

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

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

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

24 H. As used in this section:

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

5 2. "Court" means the court that made the original determination
6 that the person is in a state of mental defect or mental illness;

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

13 ~~3.~~ 4. "Guilty with mental defect" means the person committed
14 the act and was either unable to understand the nature and
15 consequences of his or her actions or was unable to differentiate
16 right from wrong, and has been diagnosed with antisocial personality
17 disorder which substantially contributed to the act for which the
18 person has been charged;

19 ~~4.~~ 5. "Mental defect" means the person has been diagnosed with
20 antisocial personality disorder which substantially contributed to
21 the act for which the person has been charged;

22 ~~5.~~ 6. "Mental illness" means a substantial disorder of thought,
23 mood, perception, psychological orientation or memory that
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1 significantly impairs judgment, behavior, capacity to recognize
2 reality or ability to meet the ordinary demands of life;

3 ~~6.~~ 7. "Not guilty by reason of mental illness" means the person
4 committed the act while mentally ill and was either unable to
5 understand the nature and consequences of his or her actions or was
6 unable to differentiate right from wrong, and has not been diagnosed
7 with antisocial personality disorder which substantially contributed
8 to the act for which the person has been charged; and

9 ~~7.~~ 8. a. "Person requiring treatment" means a person who because
10 of mental illness:

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

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

19 (3) has placed another person or persons in
20 reasonable fear of serious physical harm or
21 violent behavior directed toward such person or
22 persons as manifested by serious and immediate
23 threats,
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1 (4) is in a condition of severe deterioration such
2 that, without immediate intervention, there
3 exists a substantial risk that severe impairment
4 or injury will result to the person, or

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

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

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

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

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

1 (3) a person with seizure disorder, or

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

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

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