

1 **SENATE FLOOR VERSION**

2 February 19, 2025

3 SENATE BILL NO. 497

By: Weaver

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5
6 An Act relating to criminal procedure; amending 22
7 O.S. 2021, Section 1161, which relates to acts
8 committed by persons with mental illness or mental
9 defect; requiring Forensic Review Board to provide
10 certain notice to district attorney; updating
11 statutory language; and providing an effective date.

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

13 SECTION 1. AMENDATORY 22 O.S. 2021, Section 1161, is
14 amended to read as follows:

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

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

24 3. If a person who is found guilty with mental defect is placed
on probation under the jurisdiction of the sentencing court as

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

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

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

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

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

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

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

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

18 3. a. Within ten (10) days after the reports are filed, the
19 court must conduct a hearing to determine the present
20 condition of the person as to the issue of whether:
21 (1) the person is dangerous to the public peace or
22 safety because the person is a person requiring
23 treatment, or
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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 this section.

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 this section;

13 2. Discharge the person, and upon the motion of the court or
14 the district attorney commence civil involuntary commitment
15 proceedings against the person pursuant to the provisions of Title
16 43A of the 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 November 1, 2016.

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 provide notice to the district
14 attorney of the county where the individual was found
15 not guilty by reason of mental illness at least forty-
16 five (45) days before meeting to determine eligibility
17 for therapeutic visits, conditional release, or
18 discharge.

19 d. The Board shall promulgate rules concerning the
20 granting and structure of therapeutic visits,
21 conditional releases and discharge.

22 ~~d.~~ e. For purposes of this subsection, "therapeutic visit"
23 means a scheduled time period off campus which
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1 provides for progressive tests of the ability of the
2 consumer to maintain and demonstrate coping skills.

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

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

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

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

23 G. Upon motion by the district attorney or upon a
24 recommendation for conditional release or discharge by the Forensic

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

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

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

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

17 b. in its order of conditional release, the court shall
18 specify conditions of release and shall direct the
19 appropriate agencies or persons to submit annual
20 reports regarding the compliance of the person with
21 the conditions of release and progress in treatment,

22 c. the person must agree, in writing, that during the
23 period the person is granted conditional release and
24 is subject to the provisions thereof, there shall be

1 free transmission of all pertinent information,
2 including clinical information regarding the person,
3 among the Department of Mental Health and Substance
4 Abuse Services, the appropriate community mental
5 health centers and the appropriate district attorneys,
6 law enforcement and court personnel,

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

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

1 (1) Any peace officer who receives such an affidavit
2 shall take the person into protective custody and
3 return the person to the forensic unit of the
4 state hospital.

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

23 3. If the court determines that the person is not dangerous to
24 the public peace or safety because the person is not a person

1 requiring treatment, it shall order that the person be discharged
2 from the custody of the Department of Mental Health and Substance
3 Abuse Services.

4 H. As used in this section:

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

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

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

18 4. "Guilty with mental defect" means the person committed the
19 act and was either unable to understand the nature and consequences
20 of his or her actions or was unable to differentiate right from
21 wrong, and has been diagnosed with antisocial personality disorder
22 which substantially contributed to the act for which the person has
23 been charged;

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1 5. "Mental defect" means the person has been diagnosed with
2 antisocial personality disorder which substantially contributed to
3 the act for which the person has been charged;

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

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

14 8. a. "Person requiring treatment" means a person who
15 because of mental illness:

16 (1) poses a substantial risk of physical harm to self
17 as manifested by evidence or serious threats of
18 or attempts at suicide or other significant self-
19 inflicted bodily harm,

20 (2) poses a substantial risk of physical harm to
21 another person or persons as manifested by
22 evidence of violent behavior directed toward
23 another person or persons,

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1 (3) has placed another person or persons in
2 reasonable fear of serious physical harm or
3 violent behavior directed toward such person or
4 persons as manifested by serious and immediate
5 threats,

6 (4) is in a condition of severe deterioration such
7 that, without immediate intervention, there
8 exists a substantial risk that severe impairment
9 or injury will result to the person, or

10 (5) poses a substantial risk of serious physical
11 injury to self or death as manifested by evidence
12 that the person is unable to provide for and is
13 not providing for his or her basic physical
14 needs.

15 b. The mental health or substance abuse history of the
16 person may be used as part of the evidence to
17 determine whether the person is a person requiring
18 treatment. The mental health or substance abuse
19 history of the person shall not be the sole basis for
20 this determination.

21 c. Unless a person also meets the criteria established in
22 subparagraph a of this paragraph, "person requiring
23 treatment" shall not mean:
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- 1 (1) a person whose mental processes have been
2 weakened or impaired by reason of advanced years,
3 dementia or Alzheimer's disease,
4 (2) a person with intellectual or developmental
5 disability as defined in Title 10 of the Oklahoma
6 Statutes,
7 (3) a person with seizure disorder, or
8 (4) a person with a traumatic brain injury.

9 I. Proceedings hereunder may be held in conformance with the
10 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for
11 allowable use of videoconferencing.

12 SECTION 2. This act shall become effective November 1, 2025.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 February 19, 2025 - DO PASS
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