

**SENATE FLOOR VERSION**

February 19, 2025

SENATE BILL NO. 497

By: Weaver

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

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 1161, is

amended to read as follows:

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

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, the court at the time of sentencing shall impose any sentence that could be imposed by law upon a person who is convicted of the same offense, and the person shall serve the sentence in custody of a county jail or the Oklahoma Department of Corrections.

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

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

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

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

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

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

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

d. e. For purposes of this subsection, "therapeutic visit" means a scheduled time period off campus which

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

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

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*(Bold face denotes Committee Amendments)*

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,

- (3) has placed another person or persons in reasonable fear of serious physical harm or violent behavior directed toward such person or persons as manifested by serious and immediate threats,
  - (4) is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or
  - (5) poses a substantial risk of serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.

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

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

- 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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