

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                   STATE OF OKLAHOMA

3                   1st Session of the 60th Legislature (2025)

4                   ENGROSSED SENATE  
5                   BILL NO. 497

6                   By: Weaver of the Senate

7                   and

8                   Turner of the House

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

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

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

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

21                  2. If a person is found guilty with mental defect or enters a  
22                  plea of guilty with mental defect which is accepted by the court,  
23                  the court at the time of sentencing shall impose any sentence that  
24                  could be imposed by law upon a person who is convicted of the same

1 offense, and the person shall serve the sentence in custody of a  
2 county jail or the Oklahoma Department of Corrections.

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

21       4. When in any criminal action by indictment or information,  
22 the defense of mental illness is raised, but the defendant is not  
23 acquitted on the ground that the defendant was mentally ill at the  
24 time of the commission of the crime charged, an issue concerning

1 such defense may be raised on appeal. If the appellate court finds  
2 relief is required, the appellate court shall not have authority to  
3 modify the judgment or sentence, but will only have the authority to  
4 order a new trial or order resentencing without recommendations to  
5 sentencing.

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

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

22       2. Within forty-five (45) days of the court entering such an  
23 order, a hearing shall be conducted by the court to ascertain  
24 whether the person is dangerous to the public peace or safety

1 because the person is a person requiring treatment or, if not, is in  
2 need of continued supervision as a result of unresolved symptoms of  
3 mental illness or a history of treatment noncompliance. During the  
4 required period of hospitalization, the Department of Mental Health  
5 and Substance Abuse Services shall have the person examined by two  
6 qualified psychiatrists or one such psychiatrist and one qualified  
7 clinical psychologist whose training and experience enable the  
8 professional to form expert opinions regarding mental illness,  
9 competency, dangerousness and criminal responsibility.

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

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

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

- (1) the person is dangerous to the public peace or safety because the person is a person requiring 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.

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

19       2. If the court finds that the person is dangerous to the  
20 public peace and safety, it shall commit the person to the custody  
21 of the Department of Mental Health and Substance Abuse Services.  
22 The person shall then be subject to discharge pursuant to the  
23 procedure set forth in this section.

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

6           b. The person shall be subject to discharge or  
7           conditional release pursuant to the procedures set  
8           forth in this section.

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

14           1. Discharge the person pursuant to the procedure set forth in  
15          this section;

16           2. Discharge the person, and upon the motion of the court or  
17          the district attorney commence civil involuntary commitment  
18          proceedings against the person pursuant to the provisions of Title  
19          43A of the Oklahoma Statutes; or

20           3. Order conditional release, as set forth in subsection F of  
21          this section.

22           F. There is hereby created a Forensic Review Board to be  
23          composed of seven (7) members appointed by the Governor with the  
24          advice and consent of the Senate. The Board members shall serve for

1      a term of five (5) years except that for members first appointed to  
2      the Board: one shall serve for a term ending December 31, 2008, two  
3      shall serve for a term ending December 31, 2009, two shall serve a  
4      term ending December 31, 2010, and two shall serve for a term ending  
5      December 31, 2011.

6      1. The Board shall be composed of:

- 7              a. four licensed mental health professionals with  
8                      experience in treating mental illness, at least one of  
9                      whom is licensed as a Doctor of Medicine, a Doctor of  
10                      Osteopathy, or a licensed clinical psychologist and  
11                      shall be appointed from a list of seven names  
12                      submitted to the Governor by the Department of Mental  
13                      Health and Substance Abuse Services,  
14              b. one member who shall be an attorney licensed to  
15                      practice in this state and shall be appointed from a  
16                      list of not less than three names submitted to the  
17                      Governor by the Board of Governors of the Oklahoma Bar  
18                      Association,  
19              c. one member who shall be a retired judge 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 Judicial Nominating Committee, and  
23              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 or not guilty by reason of mental illness for those persons adjudicated as such upon or after November 1, 2016.

- 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) the individual the Board is considering for therapeutic visits, conditional release or discharge, his or her treatment advocate, and members of his or her treatment team,
- (2) the Commissioner of Mental Health and Substance Abuse Services or designee,
- (3) the Advocate General for the Department of Mental Health and Substance Abuse Services or designee,

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

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

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

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

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

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

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

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

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

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

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

- 1                   c. the person must agree, in writing, that during the  
2                   period the person is granted conditional release and  
3                   is subject to the provisions thereof, there shall be  
4                   free transmission of all pertinent information,  
5                   including clinical information regarding the person,  
6                   among the Department of Mental Health and Substance  
7                   Abuse Services, the appropriate community mental  
8                   health centers and the appropriate district attorneys,  
9                   law enforcement and court personnel,
- 10                  d. the order of the court placing the person on  
11                  conditional release shall include notice that the  
12                  conditional release of the person may be revoked upon  
13                  good cause. The person placed on conditional release  
14                  shall remain under the supervision of the Department  
15                  of Mental Health and Substance Abuse Services until  
16                  the committing court enters a final discharge order.  
17                  The Department of Mental Health and Substance Abuse  
18                  Services shall assess the person placed on conditional  
19                  release annually and shall have the authority to  
20                  recommend discharge of the person to the Board, and
- 21                  e. any agency or individual involved in providing  
22                  treatment with regard to the conditional release plan  
23                  of the person may prepare and file an affidavit under  
24                  oath if the agency or individual believes that the

1           person has failed to comply with the conditions of  
2           release or that such person has progressed to the  
3           point that inpatient care is appropriate.

- 4           (1) Any peace officer who receives such an affidavit  
5           shall take the person into protective custody and  
6           return the person to the forensic unit of the  
7           state hospital.
- 8           (2) A hearing shall be conducted within three (3)  
9           days, excluding holidays and weekends, after the  
10          person is returned to the forensic unit of the  
11          state hospital to determine if the person has  
12          violated the conditions of release, or if full-  
13          time hospitalization is the least restrictive  
14          alternative consistent with the needs of the  
15          person and the need for public safety. Notice of  
16          the hearing shall be issued, at least twenty-four  
17          (24) hours before the hearing, to the hospital  
18          superintendent, the person, trial counsel for the  
19          person, and the patient advocate general of the  
20          Department of Mental Health and Substance Abuse  
21          Services. If the person requires hospitalization  
22          because of a violation of the conditions of  
23          release or because of progression to the point

1                   that inpatient care is appropriate, the court may  
2                   then modify the conditions of release.

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

8                   H. As used in this section:

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

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

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

22       4. "Guilty with mental defect" means the person committed the  
23      act and was either unable to understand the nature and consequences  
24      of his or her actions or was unable to differentiate right from

1 wrong, and has been diagnosed with antisocial personality disorder  
2 which substantially contributed to the act for which the person has  
3 been charged;

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

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

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

17 8. a. "Person requiring treatment" means a person who  
18 because of mental illness:

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

23 (2) poses a substantial risk of physical harm to  
24 another person or persons as manifested by

evidence of violent behavior directed toward 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.

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

12                 I. Proceedings hereunder may be held in conformance with the  
13                 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for  
14                 allowable use of videoconferencing.

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

16                 COMMITTEE REPORT BY: OVERSIGHT COMMITTEE ON JUDICIARY AND PUBLIC  
17                 SAFETY, dated - 04/17/2025 - DO PASS.

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