

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 22: Insanity of Accused

§ 1161. Acts of insane person not punishable—Acquittal on ground of insanity—Discharge procedure

Cite as: 22 CNCA § 1161

An act committed by a person in a state of insanity cannot be punished as a public offense, nor can said person be tried, sentenced to punishment, or punished for a public offense while he is insane. When in any criminal action by indictment or information the defense of insanity is interposed either singly or in conjunction with some other defense, the jury shall state in the verdict, if it is one of acquittal, whether or not the defendant is acquitted on the ground of insanity. When the defendant is acquitted on the ground that he was insane at the time of the commission of the crime charged, said person shall not be discharged from custody until the Court has made a determination that said person is not presently mentally ill and dangerous to the public peace or safety.

To assist the Court in its determination, the Court shall immediately issue an examination order and specify the hospital for the mentally ill in which the said person is to be hospitalized. Upon the issuance of the order, the Marshal or Sheriff shall deliver the said person to the designated hospital for the mentally ill where the said person shall remain hospitalized for a period of not less than thirty (30) days. Within forty-five (45) days of said hospitalization, a hearing shall be conducted by the Court to ascertain whether the said person is presently mentally ill and dangerous to the public peace or safety. During the required period of hospitalization the Oklahoma Department of Mental Health or the hospital shall have the said person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical psychologist. Each examiner shall individually prepare and submit to the Court, the Prosecuting Attorney and Trial Counsel a report of his findings and an evaluation concerning whether the said person is presently mentally ill and dangerous to the public peace and safety. If the Court is unsatisfied with the psychiatric reports or if a disagreement on the issue of present mental illness and dangerousness exists between the two examiners, the Court may designate one or more additional psychiatrists and have them submit their findings and evaluations as specified above.

Within ten (10) days after the psychiatric reports are filed, the Court must conduct a hearing to determine the said person's present condition as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. The Prosecuting Attorney must establish by a preponderance of the evidence that the defendant is presently mentally ill and dangerous to the public peace or safety. At this hearing the said person

shall have the assistance of counsel and may present independent evidence as to the issue of whether he is presently mentally ill and dangerous to the public peace or safety. If the Court finds that the said person is not presently mentally ill and dangerous to the public peace or safety, it shall immediately discharge the said person from hospitalization. If the Court finds that the said person is presently mentally ill and dangerous to the public peace or safety, it shall commit the said person to the custody of Cherokee Nation or the Oklahoma Department of Mental Health. The said person shall then be subject to discharge pursuant to the procedure set forth in the Oklahoma Mental Health Law, 43A O.S. § 1-101 et seq.

During the period of hospitalization Cherokee Nation or the Oklahoma Department of Mental Health may administer or cause to be administered to the said person such psychiatric, medical or other therapeutic treatment as in its judgment should be administered.

During the period of hospitalization the Superintendent shall submit an annual report on the status of the said person to the Court, the Prosecuting Attorney and the patient's advocate of the hospital in which the said person is hospitalized. Not less than twenty (20) days prior to the scheduled release of the said person the Superintendent of the hospital for the mentally ill must deliver a written notice of the proposed discharge to the Court, the Prosecuting Attorney and the patient's advocate of the said hospital. Upon motion by the Prosecuting Attorney a second hearing shall be conducted by the Court to ascertain if the said person is mentally ill and dangerous to the public peace or safety. This hearing shall be conducted under the same procedure as the first hearing and must occur not less than ten (10) days before the scheduled release. If the Court determines that the said person continues to be mentally ill and dangerous to the public peace or safety, it shall return the said person to the hospital for additional treatment. Additional hearings may be conducted upon motion by the Prosecuting Attorney under the same provisions as described in this section.

Historical Data

LA 10-90, eff. November 13, 1990.