

ENROLLED SENATE
BILL NO. 1601

By: Cain of the Senate

and

Eddins of the House

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 1161, which relates to criminal acts of insane persons; modifying circumstances under which person may be held by the Department of Mental Health and Substance Abuse Services; modifying parameters and findings of hearing; stating qualifications of examiners; modifying procedures of examiners; stating options of court for discharge or conditional release; requiring report and notice be sent to specified entities; authorizing conditional release and providing procedures thereto; providing for notice and hearing upon revocation of conditional release; amending 22 O.S. 1991, Section 1175.1, as amended by Section 1, Chapter 207, O.S.L. 1992, 1175.2, 1175.3, as last amended by Section 5, Chapter 407, O.S.L. 1997, 1175.4, as amended by Section 2, Chapter 161, O.S.L. 1996, 1175.5, 1175.6, as amended by Section 6, Chapter 407, O.S.L. 1997 and 1175.7, as amended by Section 7, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Sections 1175.1, 1175.3, 1175.4, 1175.6 and 1175.7), which relate to determination of competency procedures; modifying definitions; clarifying language; requiring examination by qualified forensic examiners; specifying where outpatient examinations may be conducted; allowing commitment under certain circumstances; requiring time limitations on examinations; requiring county to pay costs under certain circumstances; specifying time period in which competency hearing shall be held; requiring notification of court of findings and requiring person be returned to court within specified time period; requiring hearing within certain time period; requiring court to consider certain reports; allowing testimony by telephonic or electronic means under certain circumstances; modifying questions to be answered in competency proceeding; modifying provisions regarding state custody of persons determined to be incompetent; setting time periods in which certain competency hearings shall be held; requiring referral of person under certain circumstances; modifying circumstances in which appointment of a medical supervisor shall be required; modifying circumstances under which incompetent person may be committed to custody of Department of Mental Health and Substance Abuse

Services; amending 43A O.S. 1991, Section 5-405, as renumbered by Section 12, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-416), which relates to involuntary commitment procedures; expanding patient's rights; modifying procedures for mental health hearings; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1161, is amended to read as follows:

Section 1161. A. 1. An act committed by a person in a state of insanity cannot be punished as a public offense, nor can ~~said the~~ person be tried, sentenced to punishment, or punished for a public offense while ~~he~~ such person is insane.

2. 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~~ the defendant was insane at the time of the commission of the crime charged, ~~said the~~ person shall not be discharged from custody until the court has made a determination that ~~said the~~ person is not presently ~~mentally ill and~~ dangerous to the public peace ~~or~~ and safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes.

B. 1. To assist the court in its determination, the court shall immediately issue an examination order and specify the state hospital for the mentally ill in which the ~~said~~ person is to be hospitalized. Upon the issuance of the order, the 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.

2. Within forty-five (45) days of ~~said such~~ 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 because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes or, if not, is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance. During the required period of hospitalization the Department of Mental Health and Substance Abuse Services shall have the ~~said~~ person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical psychologist whose training and experience enable the professional to form expert opinions regarding mental illness, competency, dangerousness and criminal responsibility.

C. 1. Each examiner shall, within thirty-five (35) days of hospitalization, individually prepare and submit to the court, the district attorney and the person's trial counsel a report of ~~his~~ the person's psychiatric examination findings and an evaluation concerning whether the ~~said~~ person is presently ~~mentally ill and~~ dangerous to the public peace ~~and~~ or safety.

2. If the court is ~~unsatisfied~~ dissatisfied 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~~ examiners and have them submit their findings and evaluations as specified ~~above~~ in paragraph 1 of this subsection.

3. a. 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~~ :

(1) the person is presently ~~mentally ill and~~ dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, or

(2) if not believed to be presently 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 ~~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.~~

D. 1. If the court finds that the ~~said~~ person is not presently ~~mentally ill and~~ dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes and is not in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, it shall immediately discharge the ~~said~~ person from hospitalization.

2. If the court finds that the ~~said~~ person is presently ~~mentally ill and~~ dangerous to the public peace ~~or~~ and safety, it shall commit the ~~said~~ person to the custody of the Department of Mental Health and Substance Abuse Services. The ~~said~~ person shall then be subject to discharge pursuant to the procedure set forth in ~~the Mental Health and Substance Abuse Services Law~~ Title 43A of the Oklahoma Statutes.

E. If the court finds the person is not presently dangerous to the public peace or safety because the person is a person requiring treatment pursuant to the provisions of Section 1-103 of Title 43A of the Oklahoma Statutes, but is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, the court may:

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

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

3. Order conditional release, as set forth in subsection H of this section.

F. 1. During the period of hospitalization the Department of Mental Health and Substance Abuse Services 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.

2. During the period of hospitalization the Superintendent shall submit an annual report on the status of the ~~said~~ person to the court, the district attorney and the ~~patient's advocate of the hospital in which the said person is hospitalized~~ patient advocate general of the Department of Mental Health and Substance Abuse Services. 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~~ shall deliver a written notice of the proposed discharge to the court, the district attorney and the ~~patient's~~ patient advocate of the ~~said hospital~~ general of the Department of Mental Health and Substance Abuse Services.

G. Upon motion by the district attorney a ~~second~~ subsequent hearing shall be conducted by the court to ascertain if the ~~said~~ person is ~~mentally ill and~~ presently dangerous to the public peace ~~or~~ and safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes. 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~~ presently dangerous to the public peace ~~or~~ and safety because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, it shall order the return of the ~~said~~ person to the hospital for additional treatment.

H. 1. Conditional release may be ordered for persons adjudicated not guilty by reason of insanity who are not believed to be presently dangerous to the public peace or safety.

2. Upon an examiner's recommendation for conditional release, a written plan for outpatient treatment, including recommendations from the examiner, shall be filed with the court, district attorney,

the person's trial counsel, and the person. In its order of conditional release, the court shall specify conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the person's compliance with the conditions of release and progress in treatment.

3. To be eligible for conditional release, the person shall agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the Department of Mental Health and Substance Abuse Services, the appropriate community mental health centers and the appropriate district attorneys, law enforcement and court personnel.

4. Copies of the reports shall also be submitted to the district attorney, trial counsel for the person, the hospital superintendent where the release plan was initiated, and the person.

5. The court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause. The person placed on conditional release shall remain under the supervision of the Department of Mental Health and Substance Abuse Services until the committing court enters a final discharge order.

6. a. Any agency or individual involved in providing treatment with regard to the person's conditional release plan may prepare and file an affidavit under oath if the agency or individual believes that the person has failed to comply with the conditions of release or that such person has progressed to the point that inpatient care is appropriate.
- b. 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.
- c. 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 person's needs 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.

I. Additional hearings may be conducted upon motion by the district attorney under the same provisions as described in this section.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1175.1, as amended by Section 1, Chapter 207, O.S.L. 1992 (22 O.S. Supp. 1999, Section 1175.1), is amended to read as follows:

Section 1175.1 As used in Sections 1175.1 through 1176 of this act title:

1. "Competent" or "competency" means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense;

2. "Incompetent" or "incompetency" means the present inability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense;

3. "Criminal proceeding" means every stage of a criminal prosecution after arrest and before judgment, including, but not limited to, interrogation, lineup, preliminary hearing, motion dockets, discovery, pretrial hearings and trial; and

4. "~~Doctor~~ Qualified forensic examiner" means any ~~physician~~:

a. psychiatrist with forensic training and experience,

b. psychologist with forensic training and experience, or equivalent expert

c. other licensed mental health professional whose forensic training and experience enable them to form expert opinions regarding mental illness, competency and dangerousness and who have been approved to render such opinions by the court.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1175.2, is amended to read as follows:

Section 1175.2 A. No person shall be subject to any criminal procedures after ~~he~~ the person is determined to be incompetent except as provided in Sections 1175.1 through 1175.8 of this title. The question of the incompetency of a person may be raised by the person, the ~~defense~~ attorney for the person whose competency is in question, or the district attorney, by an application for determination of competency. The application for determination of competency shall allege that the person is incompetent to undergo further proceedings, and shall state facts sufficient to raise a doubt as to the competency of the person. The court, at any time, may initiate a competency determination on its own motion, without an application, if the court has a doubt as to the competency of the person.

If the court so initiates such an application, it may appoint the district attorney for the purpose of proceeding with the application. If the district attorney opposes the application of the court, and by reason of a conflict of interest could not represent the court as applicant, then the court shall appoint private counsel. Said private counsel shall be reasonably compensated by the court fund.

B. A copy of the application for determination of competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a competency determination. The notice shall contain the following information:

1. The definition provided by Section 1175.1 of this title of competency and incompetency;

2. That, upon request, the hearing on the application may be conducted as a jury trial as provided in Section 1175.4 of this title;

3. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the petition and that the defendant may not be called to testify against ~~his~~ the defendant's will, unless the application is initiated by the defendant;

4. That if the person whose competency is in question does not have an attorney, the court will appoint an attorney for the person who shall represent ~~him~~ the person until final disposition of the case;

5. That if the person whose competency is in question is indigent or poor, the court will pay the attorney fees; and

6. That the person whose competency is in question shall be afforded such other rights as are guaranteed by state and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person whose competency is in question, upon ~~his~~ the person's father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the county, and upon any of said relatives residing outside of the county, and within the state, as may be ordered by the court, and also upon the person with whom the person whose competency is in question may reside, or at whose house ~~he~~ the person may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of this state.

C. Any criminal proceedings against a person whose competency is in question shall be suspended pending the determination of the competency of the person.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1175.3, as last amended by Section 5, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Section 1175.3), is amended to read as follows:

Section 1175.3 A. Upon filing of an application for determination of competency, the court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by Section 1175.2 of this title.

B. The court shall hold a hearing on the date provided. At the hearing, the court shall examine the application for determination of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

C. If the court finds there is no doubt as to the competency of the person, it shall order the criminal proceedings to resume.

D. 1. a. If the court finds there is a doubt as to the competency of the person, it shall order the person to be examined by ~~doctors or appropriate technicians.~~ ~~The doctors or technicians shall be practitioners in the appropriate branch of medicine relevant to the alleged incompetency of the person~~ qualified forensic examiners.

b. In addition, the Developmental Disabilities Services Division of the Department of Human Services shall receive written notice from the district attorney who filed the criminal petition, and be authorized by order of the court to have a psychologist or other appropriate clinician participate with professionals assigned by any other public or private agency in any competency evaluation wherein mental retardation or other developmental disability may be involved. The psychologist or clinician employed, by contract or otherwise, by the Department of Human Services may issue a separate opinion and recommendation to the court.

2. The person shall be examined by a qualified forensic examiner on an outpatient basis prior to referral for any necessary inpatient evaluation, as ordered by the court. ~~The court may commit the person to the custody of the Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the doctor or doctors or technicians to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination~~ The outpatient examination may be conducted in the community, the jail or detention facility where the person is held.

3. If the court determines that the person whose competency is in question may be a threat to the safety of self or others, it shall order the person retained in a secure facility until the completion of the competency hearing provided in Section 1175.4 of this title. If the court determines the person may be a threat to the safety of self or others because the individual is a person

requiring treatment as defined in Title 43A of the Oklahoma Statutes, it may commit the person to the custody of the Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination required by subsection D of this section. The person shall be required to undergo examination for a period of time sufficient for the qualified forensic examiner(s) to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination.

E. ~~The doctor or doctors~~ qualified forensic examiner(s) shall receive instructions that they shall examine the patient to determine:

1. If the person is able to appreciate the nature of the charges made against such person;

2. If the person is able to consult with the lawyer and rationally assist in the preparation of the defense of such person;

3. If the answer to question 1 or 2 is no, whether the person can attain competency within a reasonable time if provided with a course of treatment, therapy or training;

4. If the person is ~~mentally ill or~~ a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes; and

5. If the person were released without treatment, therapy or training, whether such person would presently pose a significant threat to the life or safety of self or others.

F. Upon completion of the competency evaluation, the Department of Mental Health and Substance Abuse Services shall notify the court of its findings and the person shall be returned to the court in the customary manner within five (5) business days. If the person is not returned within that time, the county in which the proceedings are to be held shall pay the costs of maintaining the person at the institution or facility for the period of time the person remains at the institution or facility in excess of the five-day period.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1175.4, as amended by Section 2, Chapter 161, O.S.L. 1996 (22 O.S. Supp. 1999, Section 1175.4), is amended to read as follows:

Section 1175.4 A. ~~After~~ A hearing to determine the competency of the person whose competency is in question shall be held within thirty (30) days after the doctor, doctors or technicians qualified forensic examiner(s) have made the determination required in Section 1175.3 of this title, a hearing on the competency of the person shall be held only upon application of the defendant or the state or upon the formal setting of a competency hearing by the court.

B. The court, at the hearing ~~on the application,~~ shall determine, by a preponderance of the evidence, if the person is incompetent. Such determination shall include consideration of all reports prepared by the qualified forensic examiner(s). The person

shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house ~~he~~ the person may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the court shall proceed to the selection of such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the court based on clear and convincing evidence that alternatives to exclusion were attempted before the court renders ~~his~~ the person's removal for that purpose or ~~his~~ the person's appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. If so stipulated by counsel for a person whose competency is in question, the district attorney and the court, testimony may be given by telephone or other electronic transmitting device approved by the court. No statement, admission or confession made by the person whose competency is in question obtained during ~~his~~ the examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form.

E. If the question of competency is submitted to a jury, the court shall instruct the jury as to the law regarding competency, and the findings they are to make. If the trial of the question is to the court, the court shall make the required findings.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1175.5, is amended to read as follows:

Section 1175.5 The jury or the court, as the case may be, shall answer the following questions in determining the disposition of the person whose competency is in question:

1. Is the person incompetent to undergo further criminal proceedings at this time? If the answer is no, criminal proceedings shall be resumed. If the answer is yes, the following question shall be answered.

2. Can the incompetency of the person be corrected within a reasonable period of time, as defined by the court, by treatment, therapy or training? If the answer is yes, the court shall make the appropriate order. If the answer is no, the following questions shall be answered.

3. Is the person ~~mentally ill~~, mentally retarded or a person requiring treatment as defined by Section ~~3~~ 1-103 of Title 43A of the Oklahoma Statutes?

4. Is the person presently a threat to the safety of ~~himself~~ self or others if released?

SECTION 7. AMENDATORY 22 O.S. 1991, Section 1175.6, as amended by Section 6, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Section 1175.6), is amended to read as follows:

Section 1175.6 A. Upon the finding by the jury or the court as provided by Section 1175.5 of this title, the court shall issue the appropriate order regarding the person as follows:

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the court shall commit the person to the legal custody of the Department of Mental Health and Substance Abuse Services, but only where the person is incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or refer to the Department of Human Services, other appropriate state agencies or a private care provider for consideration of voluntary appropriate treatment, therapy, or training;

3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, ~~and is~~ because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, then the court shall order treatment as if there had been a finding pursuant to Title 43A of the Oklahoma Statutes that the defendant ~~was~~ is a ~~mentally ill~~ person requiring treatment, without any further proceedings, and shall suspend the criminal proceeding. ~~The~~ In such circumstances the Department of Mental Health and Substance Abuse Services or other agency or private care provider providing treatment to the person or the institution wherein the person is confined or treated shall make periodic reports to the court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency or is no longer incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, the court shall hold another competency hearing to determine if the person has achieved competency, or is no longer incompetent because the person is a

person requiring treatment as defined by Title 43A of the Oklahoma Statutes. The competency hearing shall be held within twenty (20) days of receipt of the report. If the person is found to continue to be incompetent for reasons other than that the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, the court shall refer the person to the Department of Human Services, in the manner provided for in paragraph 4 subsection A of this section. If competency has been achieved, the criminal proceeding shall be resumed; and

4. a. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, ~~but is not~~ for reasons other than that the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes and is not a threat to self or society, the court shall refer the person to the Department of Human Services for consideration of voluntary assistance, subject to assistance from any other appropriate state agencies, and shall suspend the criminal proceedings.

b. ~~The~~ If pursuant to this statute, the person is referred to the Department of Human Services, the Department of Human Services shall make periodic reports to the court as to the status and activities of the person. If the Department of Human Services reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. The competency hearing shall be held within twenty (20) days of receipt of the report. If competency has been achieved, the criminal proceeding shall be resumed.

B. Any person arrested and charged with a criminal offense which is punishable by death, life imprisonment or life imprisonment without parole, who is found to be incompetent by the court because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes and ordered into the custody of the Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection A of this section, shall be placed in a ~~maximum security~~ secure ward of the mental health facility designated by the Department of Mental Health and Substance Abuse Services until such time as such person is adjudicated to ~~be~~ :

1. Be competent;

2. No longer be incompetent as a result of being a person requiring treatment as defined by Title 43A of the Oklahoma Statutes; or is adjudicated no

3. No longer determined to be a threat to any other person.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 1175.7, as amended by Section 7, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Section 1175.7), is amended to read as follows:

Section 1175.7 A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. ~~The~~ If the person is not committed to the custody of the Department of Mental Health and Substance Abuse Services, the court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the court and the type of disability sought to be corrected by the court's order. The court ~~may~~ shall require the supervisor to provide periodic progress reports to the court and may pay for the services of the medical supervisor from court funds.

C. The court may commit the incompetent person to the custody of the Department of Mental Health and Substance Abuse Services, but only where the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or other appropriate state agency, if the court, after the hearing provided in Section 1175.4 of this title, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the court determines that the defendant is dangerous to self or society as a result of being a person requiring treatment as defined by Title 43A of the Oklahoma Statutes.

D. The court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the state nor the court fund is required to directly pay for such care.

E. In no event shall an incompetent individual be involuntarily committed to the legal custody of the Department of Human Services or any of its facilities.

SECTION 9. AMENDATORY 43A O.S. 1991, Section 5-405, as renumbered by Section 12, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-416), is amended to read as follows:

Section 5-416. A. The court, in considering a commitment petition filed under Section ~~5-211 of this title~~ 5-410 or Section ~~5-401~~ 9-102 of this title, shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization, ~~and nor~~ nor without addressing, ~~at the time of hospitalization,~~ the patient's competency to consent to or refuse the treatment that is ordered, including, but not limited to, the patient's ~~right to~~ rights:

1. To be heard concerning the patient's treatment; and
2. To refuse psychotropic medications.

B. 1. If the court, in considering a commitment petition filed under Section ~~5-211 of this title~~ 5-410 or Section ~~5-401~~ 9-102 of this title, finds that a program other than hospitalization is

adequate to meet the individual's treatment needs and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization is appropriate for a period of ~~ninety (90) days~~ set by the court, during which time the court ~~shall continue its:~~

- a. shall have continuing jurisdiction over the individual as a person requiring treatment, and
- b. shall periodically, no less often than annually, review the treatment needs of the individual and determine whether or not to continue, discontinue, or modify the treatment.

2. If at any time during the ninety-day period it comes to the attention of the court from a person competent to file a petition, as set forth in pursuant to subsection A of Section 5-410 of this title, that the individual ordered to undergo a program of alternative treatment to hospitalization is not complying with the order or that the alternative treatment program has not been sufficient to prevent harm or injury which the individual may be inflicting upon himself or others, the court may order the person to show cause why the court shall should not do one or more of the following:

~~1. Consider~~

- a. implement other alternatives to hospitalization, modify or rescind the original order or direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period, or for a period not to exceed twelve (12) months, if necessary and appropriate, based on written findings of the court, or

~~2. Enter~~

- b. enter an order of admission pursuant to the provisions of the Mental Health Law this title, directing that the person be hospitalized and, if the individual refuses to comply with this order of hospitalization, the court may direct a peace officer to take the individual into protective custody and transport ~~such~~ the person to a public or private facility designated by the court.

3. If at the date of expiration of an order of alternative treatment will expire without further review by the court and it is believed that the individual continues to require treatment, a person competent to file a petition, pursuant to subsection A of Section 5-410 of this title, may file either an application for an extension of the court's previous order or an entirely new petition for a determination that the individual is a person requiring treatment may be filed pursuant to this title; or.

4. A hearing on the application or petition filed pursuant to paragraph 3 of this subsection shall be held within ten (10) days

after the application or petition is filed, unless the court extends the time for good cause. In setting the matter for hearing, the court shall consider whether or not the prior orders of the court will expire during the pendency of the hearing and shall make appropriate orders to protect the interests of the individual who is the subject of the hearing.

~~4. C.~~ Prior to ordering the hospitalization of an individual, the court shall inquire into the adequacy of treatment to be provided to the individual by the facility, and hospitalization shall not be ordered unless the facility in which the individual is to be treated can provide such person with treatment which is adequate and appropriate to such person's condition.

~~C. D. At the request of the administrator of a facility to which a person has been involuntarily committed for inpatient treatment pursuant to the provisions of Section 5-212 of this title or Section 5-401 of this title, or at the request of such person, the~~ The court may modify an order for involuntary commitment and order alternative treatment pursuant to the provisions of this section upon request of any of the following:

1. The administrator of a facility to which a person has been involuntarily committed for inpatient treatment pursuant to the provisions of Section 5-410 or Section 9-102 of this title;

2. The person committed; or

3. A person competent to file a petition pursuant to subsection A of Section 5-410 of this title.

~~D. E.~~ Nothing in this section shall prohibit the Department of Mental Health and Substance Abuse Services, or the court, from discharging a person admitted pursuant to this section, at a time prior to the expiration of the ~~ninety-day~~ period of alternative treatment, or any extension thereof. The Department of Mental Health and Substance Abuse Services shall ~~issue~~ file a report ~~to~~ with the court, outlining the disposition of each person admitted pursuant to this section, ~~subsequent~~ at least forty-eight (48) hours prior to discharge.

F. Notice of any proceedings pursuant to this section shall be given to the patient, the patient's guardian, the patient's attorney, and the person filing the petition or application.

G. The provisions of this section shall apply to all orders and petitions for alternative treatment in force or pending on and after the effective date of this act.

SECTION 10. This act shall become effective November 1, 2000.

Passed the Senate the 22nd day of May, 2000.

President of the Senate

Passed the House of Representatives the 23rd day of May, 2000.

Speaker of the House of
Representatives