

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 818

By: Wilkerson of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 1175.1, 1175.3, 1175.5, 1175.6 and 1175.7, which relate to determination of competency; providing definition of certain time period; requiring certain forensic examiners to provide certain information within certain period of time; modifying questions to be answered by court or jury; placing time limit on commission of certain persons to custody of Department of Mental Health and Substance Abuse Services; requiring suspension of criminal proceedings under certain conditions; requiring court to refer, conditionally release, or commit certain persons to the custody of the Department of Human Services; requiring competency hearing upon certain reports from certain agencies; requiring civil commitment proceedings and dismissal without prejudice of criminal proceedings under certain conditions; tolling statute of limitations for criminal charges during certain commitment; requiring certain reports by Department of Human Services; requiring certain competency hearings upon certain reports; tolling statute of limitations upon conditional release or commitment to custody of Department of Human Services of certain persons; requiring certain plan for services upon conditional release of certain persons; requiring certain agreement that certain information sharing among certain entities; providing for supervision during and revocation of conditional release; providing procedures for revocation of conditional release; adding condition for removing certain persons from secure ward of mental health facility; removing prohibition on involuntary commitment of certain persons to custody of Department of Human Services; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1175.1, is amended to read as follows:

Section 1175.1 As used in Sections 1175.1 through 1176 of this 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. "Qualified forensic examiner" means any:

- a. psychiatrist with forensic training and experience,
- b. psychologist with forensic training and experience, or
- c. ~~either~~ a 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; and

5. "Reasonable period of time" means a time not exceeding the lesser of:

- a. the maximum sentence specified for the most serious offense with which the defendant is charged, or
- b. two (2) years.

SECTION 2. AMENDATORY 22 O.S. 2001, 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 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 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~~ pose a danger 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~~ pose a danger 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 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~~ person is unable to appreciate the nature of the charge or to consult and rationally assist in the preparation of the defense, whether the person can attain competency within a reasonable period of time as provided by Section 1175.1 of this title if provided with a course of treatment, therapy or training;

4. If the person is 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~~ danger 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 3. AMENDATORY 22 O.S. 2001, 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~~ Section 1175.1 of this title, by treatment, therapy or training? If the answer is yes, the court shall make the appropriate order pursuant to Section 1175.6 of this title. If the answer is no, the following questions shall be answered.

~~3.:~~ Is the person mentally retarded or ~~a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes~~ developmentally disabled as defined by Section 1408 of Title 10 of the Oklahoma Statutes?

~~4. 3.~~ Is the person a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes?

4. Does the person presently pose a threat danger to the safety of self or others if released?

SECTION 4. AMENDATORY 22 O.S. 2001, 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 within a reasonable period of time as defined by Section 1175.1 of this title, the court shall commit the person to the legal custody of the Department of Mental Health and Substance Abuse Services, but only ~~where~~ if the person is incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, ~~or refer to.~~ If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, but capable of achieving competence with treatment, therapy or training within a reasonable period of time as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and either:

- a. refer the person to the Department of Human Services, ~~other appropriate state agencies or a private care provider~~ for consideration of voluntary assistance, subject to assistance from any other appropriate state agencies,
- b. conditionally release the individual, as set forth in subsections C, D, E and F of this section to the Department of Human Services for placement and treatment, or
- c. commit the person to the custody of the Department of Human Services for appropriate treatment, therapy, or training.

If either the Department of Mental Health and Substance Abuse Services or the Department of Human Services reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine whether 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 proceedings shall be resumed. If the person is found to be continuing to be incompetent because the person is a person requiring treatment as defined in Title 43A of the Oklahoma Statutes, the person shall be committed to the custody of the Department of Mental Health and Substance Services. If the person is found to be incompetent for reasons other than being a person requiring treatment as defined by Title 43A of the Oklahoma States, the court shall refer, conditionally release, or commit the person to the Department of Human Services in the manner provided in subparagraphs a, b, and c of this paragraph;

3. If the person is found to be incompetent ~~and~~ because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, but is found not capable of achieving competency within a reasonable period of time ~~because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes~~ as defined by Section 1175.1 of this title, then the court shall ~~order treatment as if there had been a finding pursuant to Title 43A of the Oklahoma Statutes that the defendant is a person requiring treatment, without any further proceedings~~ commence civil commitment proceedings pursuant to Title 43A of the Oklahoma Statutes, and shall ~~suspend~~ dismiss without prejudice the criminal proceeding. 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. If the individual is subsequently committed to the Department of Mental Health and Substance Abuse Services pursuant to Title 43A of the Oklahoma Statutes, the statute of limitations for the criminal charges which were dismissed by the court shall be tolled until the person is discharged from the Department of Mental Health and Substance Abuse Services; or~~

4. a. ~~If the person is found to be incompetent, and for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, but is not capable of achieving competency within a reasonable period of time 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 for consideration of voluntary assistance, subject to assistance from any other appropriate state agencies, and shall suspend dismiss without prejudice the criminal proceedings.~~



~~b. 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, and either:~~

- ~~a. refer the person to the Department of Human Services for consideration of voluntary assistance, subject to assistance from any other appropriate state agencies,~~
- ~~b. conditionally release the individual, as set forth in subsections C, D, E and F of this section, to the Department of Human Services for placement and treatment, or~~
- ~~c. commit the person to the custody of the Department of Human Services for appropriate treatment, therapy, or training.~~

~~B. The Department of Human Services shall make periodic reports to the court at least once every 180 days as to the status and activities of the person. If the Department of Human Services reports that the person is no longer dangerous and should be discharged either from the terms of the conditional release or the commitment to the Department of Human Services, the court shall hold a hearing within twenty (20) days of receipt of the report. If the court finds that the person is not presently dangerous to the public peace or safety and is not in need of continued supervision, it shall immediately discharge the person from the custody of the~~

Department of Human Services. In all cases where the person is either conditionally released or committed to the custody of the Department of Human Services, the statute of limitations for the criminal charges which were dismissed by the court shall be tolled until the person is discharged from the conditional release or custody of the Department of Human Services.

C. For any individual recommended for conditional release, a written plan for services shall be prepared by the Department of Human Services and filed with the court. In its order of conditional release, the court shall specify the conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the individual's compliance with the conditions of release and progress.

D. To be eligible for conditional release, the individual shall agree, in writing, that during the period the individual 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 individual's service providers, the appropriate district attorneys, law enforcement and court personnel. To effect this agreement, the individual shall execute any releases required by law to allow for the dissemination of this information.

E. The court's order placing the person on conditional release shall include notice that the individual's conditional release may be revoked upon good cause. The person placed on conditional release shall remain under the supervision of the Department of Human Services until the committing court enters a final discharge order.

F. The district attorney, as well as any agency or individual involved in providing services with regard to the individual's conditional release, may prepare and file an affidavit under oath if the district attorney, agency or individual believes that the person

has failed to comply with the conditions of release. The court shall then conduct a hearing to determine if the person has violated the conditions of release. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the Department of Human Services, the individual, trial counsel for the individual and the client advocate general of the Department of Human Services. After reviewing the evidence concerning any alleged violation of the conditions of the release, the individual's progress, treatment alternatives and the need for public safety, the court may order no change to the conditions for the individual's release, modify the conditions of release, or commit the person to the custody of the Department of Human Services for appropriate treatment, therapy or training.

G. 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 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:

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~~
3. No longer be a ~~threat~~ danger to self or any other person; or
4. Be found unable to attain competence in a reasonable period of time.

SECTION 5. AMENDATORY 22 O.S. 2001, 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~~ in Section 1175.1 of this title, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. 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 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 6. This act shall become effective November 1, 2003.

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