

and

Askins of the House

An Act relating to criminal procedure and competency; amending 10 O.S. 2001, Section 1408, which relates to definitions; modifying definition; amending 22 O.S. 2001, Sections 1175.1, 1175.3, 1175.5 and 1175.6, which relate to determination of competency; modifying definitions; requiring Department of Mental Health and Substance Abuse Services to conduct certain examination; conforming language; modifying certain required determinations; modifying certain questions; requiring court to issue certain orders under specified circumstances; requiring commitment of certain person upon certain finding; requiring certain reports to court; requiring hearing upon certain determination; stating effect of certain findings; providing for tolling of certain statute of limitations under certain circumstances; stating powers and duties of Office of Public Guardian; stating exceptions to applicability of certain provisions; requiring certain plan to be filed with court; requiring specified order to include certain conditions; referring matter to certain entity upon specified finding; requiring establishment of certain procedures; amending 30 O.S. 2001, Section 6-102, which relates to public guardianship pilot program; stating exception to certain provision; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 1408, is amended to read as follows:

Section 1408. A. "Mentally retarded person" as used in Sections 1406 through 1424 of this title means a person ~~afflicted with mental defectiveness from birth or from an early age to such an extent that he is incapable of managing himself or his affairs, who for his own welfare or the welfare of others or of the community requires supervision, control, or care, and who is not mentally ill or of unsound mind to such an extent as to require his certification to an institution for the mentally ill~~ who has significantly

subaverage functioning, IQ of less than 70, manifested before age 18 and existing concurrently with related limitations in two or more of the following applicable adaptive skill areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social skills;
5. Use of community resources;
6. Self-direction;
7. Health and safety;
8. Functional academics;
9. Leisure; and
10. Work.

B. "Resident" as used in Sections 1406 through 1424 of this title shall mean a person admitted to and in residence in any of the institutions named in Section 1406 of this title, or on a vacation or extended vacation status from such institution.

C. "Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Individuals" means the national private nonprofit organization established for the purpose of promoting quality services for mentally retarded persons which is incorporated under that name.

D. "Developmental disability" as used in Sections 1406 through 1424 of this title means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, or autism;
2. Is manifested before the person attains twenty-two (22) years of age;
3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

- a. self-care,
- b. receptive and expressive language,
- c. learning,
- d. mobility,
- e. self-direction,
- f. capacity for independent living, and
- g. economic self-sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. The term developmental disability shall not include mentally ill persons, as those persons are defined by Section 1-103 of Title 43A of the Oklahoma Statutes, whose sole disability is mental illness.

E. Nothing in subsection D of this section shall be construed to render persons who are receiving services upon the effective date of this act through programs and services for mentally retarded persons offered by the Department of Human Services as ineligible for such services. The Department of Human Services may provide, within the limitations of funds and other resources available for such purpose, programs and services for persons with developmental disabilities who are not presently served by the Department of Human Services.

SECTION 2. 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. "Dangerous" means a person who poses a substantial risk of harm to self or others as defined in Section 1-103(18)(a) or (b) of Title 43A of the Oklahoma Statutes;

4. "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.~~ 5. "Qualified forensic examiner" means any:

- a. psychiatrist with forensic training and experience,
- b. psychologist with forensic training and experience, or
- c. ~~other~~ a licensed mental health professional whose forensic training and experience enable ~~them~~ him or her to form expert opinions regarding mental illness, competency and dangerousness and who ~~have~~ has been approved to render such opinions by the court;

6. "Reasonable period of time" means a period not to exceed the lesser of:

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

7. "Public guardian" means the Office of Public Guardian as established under the Oklahoma Public Guardianship Act in Section 6-101 et seq. of Title 30 of the Oklahoma Statutes.

SECTION 3. 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~~ the Department of Mental Health and Substance Abuse Services.

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 to the safety of self or others~~ dangerous as defined in Section 1175.1 of this title, 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~~ dangerous as defined in Section 1175.1 of this title because the individual is a person requiring treatment as defined in Section 1-103 of 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 charges 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 defined in 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 is incompetent because the person is mentally retarded as defined in Section 1408 of Title 10 of the Oklahoma Statutes;

6. If the answers to questions 4 and 5 are no, why the defendant is incompetent; and

7. 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~~ be dangerous as defined in Section 1175.1 of this title.

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 4. 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~~ questions 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~~ through 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 incompetent because the person is mentally retarded or a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes as defined in Section 1408 of Title 10 of the Oklahoma Statutes?

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

5. If the answers to questions 3 and 4 are no, why is the defendant incompetent?

6. Is the person presently ~~a threat to the safety of self or others~~ dangerous as defined in Section 1175.1 of this title if released?

SECTION 5. 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, 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~~ because the person is a person requiring treatment as defined in Title 43A of the Oklahoma

Statutes, the court shall issue the appropriate order as set forth in Section 6 of this act;

3. ~~If the person is found to be incompetent and 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, 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, and shall suspend 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 because the person is mentally retarded as defined in Section 1408 of Title 10 of the Oklahoma Statutes, the court shall issue the appropriate order as set forth in Section 7 of this act; and~~

4. ~~a.~~ If the person is found to be incompetent,~~and 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 the criminal proceedings~~ for reasons
other than the person is a person requiring treatment
as defined by Section 1-103 of Title 43A of the
Oklahoma Statutes, or for reasons other than the
person is mentally retarded as defined in Section 1408
of Title 10 of the Oklahoma Statutes, the court shall
issue the appropriate order as set forth in Section 8
of this act.

~~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.~~

~~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 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 to any other person.~~

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1175.6a of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If the person is found to be incompetent because the person is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and commit the person to the legal custody of the Department of Mental Health and Substance Abuse Services.

1. The Department of Mental Health and Substance Abuse Services shall make periodic reports to the court as to the competency of the defendant.

2. If the person is determined by the Department of Mental Health and Substance Abuse Services to have regained competency, or is no longer incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, a hearing shall be scheduled within twenty (20) days:

a. if found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed,

b. if the person is found to continue to be incompetent because the person is a person requiring treatment as

defined in Title 43A of the Oklahoma Statutes, the person shall be returned to the custody of the Department of Mental Health and Substance Abuse Services,

- c. if the person is found to be incompetent because the person is mentally retarded as defined by Title 10 of the Oklahoma Statutes, the court shall issue the appropriate order as set forth in Section 7 of this act,
- d. 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, and other than the person is mentally retarded as defined in Title 10 of the Oklahoma Statutes, and is also found to be not dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 7 of this act,
- e. 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, and other than the person is mentally retarded as defined in Title 10 of the Oklahoma Statutes, but is also found to be dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 8 of this act.

B. If the person is found to be incompetent because the person is a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes, but not capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall commence civil commitment proceedings pursuant to Title 43A and shall dismiss without prejudice the criminal proceeding. If the person is

subsequently committed to the Department of Mental Health and Substance Abuse Services pursuant to Title 43A, 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 pursuant to Section 7-101 of Title 43A of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1175.6b of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If the person is found to be incompetent primarily because the person is mentally retarded as defined in Section 1408 of Title 10 of the Oklahoma Statutes, and is also found by the court to be dangerous as defined by Section 1175.1 of this Title, the court shall suspend the criminal proceedings, and shall place the person into the custody of the Office of Public Guardian. The Office of Public Guardian shall act with all powers set forth in the Oklahoma Public Guardianship Act, and:

1. The Office of Public Guardian shall place any person placed in its custody under this title in a facility or residential setting, private or public, willing to accept the individual and that has a level of supervision and security that is appropriate to the needs of the person;

2. Such placements shall be within the sole discretion of the Office of Public Guardian;

3. All such placements made by the Office of Public Guardian shall be made within six (6) months of the date of the order awarding custody to the Office of Public Guardian;

4. The Office of Public Guardian shall report to the court at least every six (6) months as to the status of the person including, but not limited to, the type of placement, services provided, level of supervision, the medical and psychological health of the person, whether the person would be dangerous if conditionally released into

a nonsecure environment, the assistance and services that would be required for such conditional release and whether the person has achieved competency;

5. If the person is determined by the Office of Public Guardian to have regained competency or that conditional release to a private guardian or other caretaker is appropriate, a hearing shall be scheduled within twenty (20) days. If found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed. If the court finds conditional release to be appropriate, the court shall make an appropriate order for conditional release; and

6. The provisions of subsections C, H and I of Section 6-101 of Title 30 of the Oklahoma Statutes shall not apply to custody orders arising under this title.

B. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes and is found to be not dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and either refer the person to the Department of Human Services for consideration of voluntary assistance or conditionally release the person as set forth in this section.

1. For any person 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 person's compliance with the conditions of release and progress:

- a. 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 person's treatment providers, the appropriate district attorneys, law enforcement and court personnel. To affect this agreement, the person shall execute any releases required by law to allow for the dissemination of this information,

- b. 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,
- c. the district attorney, as well as any agency or individual involved in providing services with regard to the person'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 person, trial counsel for the person, 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 person's progress, treatment alternatives, and the need for public safety, the court may order no change to the conditions for the person's release or modify the conditions of release, and

- d. the person placed on conditional release shall remain in a conditional release status until the reviewing court issues a full release from all conditions.

2. If the person is determined by the Department of Human Services to have regained competency, a hearing shall be scheduled within twenty (20) days:

- a. if found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed,
- b. if the person is found to continue to be incompetent, the person shall be returned to either conditional release or referred to the Department of Human Services for consideration of voluntary assistance.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1175.6c of Title 22, unless there is created a duplication in numbering, reads as follows:

A. 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, or the person is mentally retarded as defined by Title 10 of the Oklahoma Statutes, but is also found to be dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and refer the matter to the Department of Human Services and Department of Mental Health and Substance Abuse Services for determination of appropriate placement.

B. The Department of Human Services and the Department of Mental Health and Substance Abuse Services shall jointly establish procedures by the effective date of this act to determine the appropriate placement of individuals who are found to be incompetent to stand trial for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or the person is mentally retarded as defined by Title 10 of the Oklahoma Statutes. Both agencies shall then submit their

joint recommendation to the court for determination of appropriate placement.

SECTION 9. AMENDATORY 30 O.S. 2001, Section 6-102, is amended to read as follows:

Section 6-102. A. Subject to the availability of funds, the Department of Human Services shall establish a public guardianship pilot program.

B. The Department of Human Services shall establish and operate the pilot program in consultation with an evaluating board established pursuant to this section and in accordance with the provisions of the Oklahoma Public Guardianship Act, except as to custody orders entered in criminal competency proceedings as set forth in Section 7 of this act.

C. The evaluating board shall determine the effectiveness of the pilot program. The evaluating board shall submit a preliminary report to the Legislature no later than six (6) months after the pilot program is established. Such report shall cover:

1. The feasibility of statewide expansion of the program;
2. Staffing, particularly use of volunteers, training and liability issues;
3. Funding sources;
4. Eligibility standards;
5. Fee schedule;
6. Special-needs wards; and
7. Professional guardians.

D. The evaluating board shall consist of not more than two appointees from each of the following officials and agencies:

1. Governor;
2. Speaker of the House of Representatives;
3. President Pro Tempore of the Senate;
4. Office of the Attorney General;
5. Oklahoma Health Care Authority;

6. Developmental Disabilities Services Division of the
Department of Human Services;

7. Department of Mental Health and Substance Abuse Services;

8. Adult Protective Services;

9. A Legal Services Developer;

10. State Long-Term Care Ombudsman;

11. Legal Aid of Western Oklahoma;

12. Legal Services of Eastern Oklahoma;

13. Oklahoma Bar Association; and

14. Advocacy Partnership for Aging Oklahomans.

SECTION 10. This act shall become effective April 1, 2005.

Passed the Senate the 10th day of March, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2004.

Presiding Officer of the House
of Representatives