

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1459

By: Ownbey

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5
6 AS INTRODUCED

7 An Act relating to public guardians; amending 22 O.S.
8 2011, Section 1175.6b, which relates to persons in
the custody of the Office of Public Guardian;
9 directing status report to be sealed by the court;
10 requiring access to certain information be strictly
controlled; providing exceptions; and providing an
effective date.

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

14 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1175.6b, is
15 amended to read as follows:

16 Section 1175.6b A. If the person is found to be incompetent
17 primarily because the person is mentally retarded as defined in
18 Section 1408 of Title 10 of the Oklahoma Statutes, and is also found
19 by the court to be dangerous as defined by Section 1175.1 of this
20 ~~Title title~~, the court shall suspend the criminal proceedings, and
21 shall place the person into the custody of the Office of Public
22 Guardian. The Office of Public Guardian shall act with all powers
23 set forth in the Oklahoma Public Guardianship Act, and:
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1 1. The Office of Public Guardian shall place any person placed
2 in its custody under this title in a facility or residential
3 setting, private or public, willing to accept the individual and
4 that has a level of supervision and security that is appropriate to
5 the needs of the person;

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

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

11 4. The Office of Public Guardian shall report to the court at
12 least every six (6) months as to the status of the person including,
13 but not limited to, the type of placement, services provided, level
14 of supervision, the medical and psychological health of the person,
15 whether the person would be dangerous if conditionally released into
16 a nonsecure environment, the assistance and services that would be
17 required for such conditional release and whether the person has
18 achieved competency. The status report shall not constitute a
19 public record and shall be sealed by the court. Access to the
20 information contained in the status report shall be strictly
21 controlled. Except upon court order, no information contained in
22 the status report shall be disclosed to persons other than:

- 23 a. the subject of the proceeding and the subject's
24 attorney, and

1 b. the district attorney for which the case is pending;

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

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

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

21 1. For any person recommended for conditional release, a
22 written plan for services shall be prepared by the Department of
23 Human Services and filed with the court. In its order of
24 conditional release, the court shall specify the conditions of

1 release and shall direct the appropriate agencies or persons to
2 submit annual reports regarding the person's compliance with the
3 conditions of release and progress:

- 4 a. to be eligible for conditional release, the person
5 shall agree, in writing, that during the period the
6 person is granted conditional release and is subject
7 to the provisions thereof, there shall be free
8 transmission of all pertinent information, including
9 clinical information regarding the person, among the
10 person's treatment providers, the appropriate district
11 attorneys, law enforcement and court personnel. To
12 affect this agreement, the person shall execute any
13 releases required by law to allow for the
14 dissemination of this information,
- 15 b. the court's order placing the person on conditional
16 release shall include notice that the person's
17 conditional release may be revoked upon good cause,
- 18 c. the district attorney, as well as any agency or
19 individual involved in providing services with regard
20 to the person's conditional release, may prepare and
21 file an affidavit under oath if the district attorney,
22 agency, or individual believes that the person has
23 failed to comply with the conditions of release. The
24 court shall then conduct a hearing to determine if the

1 person has violated the conditions of release. Notice
2 of the hearing shall be issued, at least twenty-four
3 (24) hours before the hearing, to the Department of
4 Human Services, the person, trial counsel for the
5 person, and the client advocate general of the
6 Department of Human Services. After reviewing the
7 evidence concerning any alleged violation of the
8 conditions of the release, the person's progress,
9 treatment alternatives, and the need for public
10 safety, the court may order no change to the
11 conditions for the person's release or modify the
12 conditions of release, and

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

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

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

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SECTION 2. This act shall become effective November 1, 2013.

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