

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3283

By: Kannady of the House

and

Sparks of the Senate

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 1007, which relates to procedures for entering verdicts in death penalty cases; directing the Department of Mental Health and Substance Abuse Services to provide competency restoration services for certain defendants; authorizing the Department to designate entities to provide competency restoration services; amending 22 O.S. 2011, Section 1175.6a, as amended by Section 2, Chapter 300, O.S.L. 2015 (22 O.S. Supp. 2017, Section 1175.6a), which relates to procedures for competency hearings and civil commitment proceedings; clarifying competency procedures for preconviction defendants; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 1007, is amended to read as follows:

Section 1007. The verdict of the jury must be entered upon the minutes and thereupon the court must make and cause to be entered an

1 order reciting the fact of such inquiry and the result thereof, and
2 when it is found that the defendant is insane because of a mental
3 illness which causes the person to be presently unable (1) to have a
4 rational understanding as to why he or she is being executed and (2)
5 to have a rational understanding that he or she is to be executed
6 and that execution is imminent, the court shall order ~~must direct~~
7 ~~that he be taken to one of the state hospitals for the insane and~~
8 ~~there kept for safe confinement until his reason is restored~~ the
9 Department of Mental Health and Substance Abuse Services to provide,
10 where the defendant is currently incarcerated, treatment, therapy or
11 training which is calculated to allow the defendant to be restored
12 to his or her sanity such that the defendant is able (1) to have a
13 rational understanding as to why he or she is being executed and (2)
14 to have a rational understanding that he or she is to be executed
15 and that execution is imminent. The Department of Mental Health and
16 Substance Abuse Services may designate a willing entity to provide
17 such restoration services on behalf of the Department, provided the
18 entity has qualified personnel.

19 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1175.6a, as
20 amended by Section 2, Chapter 300, O.S.L. 2015 (22 O.S. Supp. 2017,
21 Section 1175.6a), is amended to read as follows:

22 Section 1175.6a A. If the person is found to be incompetent
23 prior to conviction because he or she is a person requiring
24 treatment as defined in Section 1-103 of Title 43A of the Oklahoma

1 Statutes, but capable of achieving competence with treatment within
2 a reasonable period of time as defined by Section 1175.1 of this
3 title, the court shall suspend the criminal proceedings and order
4 the Department of Mental Health and Substance Abuse Services to
5 provide treatment, therapy or training which is calculated to allow
6 the person to achieve competency. The Department may designate a
7 willing entity to provide such competency restoration services on
8 behalf of the Department, provided the entity has qualified
9 personnel. The court shall further order the Department to take
10 custody of the individual as soon as a forensic bed becomes
11 available, unless both the Department and the county jail where the
12 person is being held determine that it is in the best interests of
13 the person to remain in the county jail. Such competency
14 restoration services shall begin within a reasonable period of time
15 after the court has determined that the person is not competent to
16 stand trial.

17 The person shall remain in the custody of the county jail until
18 such time as the Department has a bed available at the forensic
19 facility unless competency restoration services are provided by a
20 designee of the Department, in which case custody of the person
21 shall be transferred to the Department.

22 B. The Department of Mental Health and Substance Abuse Services
23 or designee shall make periodic reports to the court as to the
24 competency of the defendant.

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

6 1. If found competent by the court or a jury after such
7 rehearing, criminal proceedings shall be resumed;

8 2. If the person is found to continue to be incompetent because
9 the person is a person requiring treatment as defined in Title 43A
10 of the Oklahoma Statutes, the person shall be returned to the
11 custody of the Department of Mental Health and Substance Abuse
12 Services or designee;

13 3. If the person is found to be incompetent because the person
14 is mentally retarded as defined by Title 10 of the Oklahoma
15 Statutes, the court shall issue the appropriate order as set forth
16 in Section 1175.6b of this title;

17 4. If the person is found to be incompetent for reasons other
18 than the person is a person requiring treatment as defined by Title
19 43A of the Oklahoma Statutes, and other than the person is mentally
20 retarded as defined in Title 10 of the Oklahoma Statutes, and is
21 also found to be not dangerous as defined by Section 1175.1 of this
22 title, the court shall issue the appropriate order as set forth in
23 Section 1175.6b of this title; or
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1 5. If the person is found to be incompetent for reasons other
2 than the person is a person requiring treatment as defined by Title
3 43A of the Oklahoma Statutes, and other than the person is mentally
4 retarded as defined in Title 10 of the Oklahoma Statutes, but is
5 also found to be dangerous as defined by Section 1175.1 of this
6 title, the court shall issue the appropriate order as set forth in
7 Section 1175.6c of this title.

8 D. If the person is found to be incompetent because the person
9 is a person requiring treatment as defined by Section 1-103 of Title
10 43A of the Oklahoma Statutes, but not capable of achieving
11 competence with treatment within a reasonable period of time as
12 defined by Section 1175.1 of this title, the court shall commence
13 civil commitment proceedings pursuant to Title 43A and shall dismiss
14 without prejudice the criminal proceeding. If the person is
15 subsequently committed to the Department of Mental Health and
16 Substance Abuse Services pursuant to Title 43A, the statute of
17 limitations for the criminal charges which were dismissed by the
18 court shall be tolled until the person is discharged from the
19 Department of Mental Health and Substance Abuse Services pursuant to
20 Section 7-101 of Title 43A of the Oklahoma Statutes.

21 SECTION 3. It being immediately necessary for the preservation
22 of the public peace, health or safety, an emergency is hereby
23 declared to exist, by reason whereof this act shall take effect and
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1 be in full force from and after its passage and approval.

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