

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 HOUSE BILL 3283

 By: Kannady

7 AS INTRODUCED

8 An Act relating to criminal procedure; amending 22
9 O.S. 2011, Section 1007, which relates to procedures
10 for entering verdicts in death penalty cases;
11 directing the Department of Mental Health and
12 Substance Abuse Services to provide competency
13 restoration services for certain defendants;
14 authorizing the Department to designate entities to
15 provide competency restoration services; amending 22
16 O.S. 2011, Section 1175.6a, as amended by Section 2,
17 Chapter 300, O.S.L. 2015 (22 O.S. Supp. 2017, Section
18 1175.6a), which relates to procedures for competency
19 hearings and civil commitment proceedings; clarifying
20 competency procedures for preconviction defendants;
21 and declaring an emergency.

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

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

25 Section 1007. The verdict of the jury must be entered upon the
26 minutes and thereupon the court must make and cause to be entered an
27 order reciting the fact of such inquiry and the result thereof, and
28 when it is found that the defendant is ~~insane~~ not competent because
29 he or she is a person requiring treatment, as defined in Section 1-

1 103 of Title 43A of the Oklahoma Statutes, the court shall order
2 ~~must direct that he be taken to one of the state hospitals for the~~
3 ~~insane and there kept for safe confinement until his reason is~~
4 ~~restored~~ the Department of Mental Health and Substance Abuse
5 Services to provide, where the defendant is currently incarcerated,
6 treatment, therapy or training which is calculated to allow the
7 defendant to achieve competency. The Department of Mental Health
8 and Substance Abuse Services may designate a willing entity to
9 provide such competency restoration services on behalf of the
10 Department, provided the entity has qualified personnel.

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

14 Section 1175.6a. A. If the person is found to be incompetent
15 prior to conviction because he or she is a person requiring
16 treatment as defined in Section 1-103 of Title 43A of the Oklahoma
17 Statutes, but capable of achieving competence with treatment within
18 a reasonable period of time as defined by Section 1175.1 of this
19 title, the court shall suspend the criminal proceedings and order
20 the Department of Mental Health and Substance Abuse Services to
21 provide treatment, therapy or training which is calculated to allow
22 the person to achieve competency. The Department may designate a
23 willing entity to provide such competency restoration services on
24 behalf of the Department, provided the entity has qualified

1 personnel. The court shall further order the Department to take
2 custody of the individual as soon as a forensic bed becomes
3 available, unless both the Department and the county jail where the
4 person is being held determine that it is in the best interests of
5 the person to remain in the county jail. Such competency
6 restoration services shall begin within a reasonable period of time
7 after the court has determined that the person is not competent to
8 stand trial.

9 The person shall remain in the custody of the county jail until
10 such time as the Department has a bed available at the forensic
11 facility unless competency restoration services are provided by a
12 designee of the Department, in which case custody of the person
13 shall be transferred to the Department.

14 B. The Department of Mental Health and Substance Abuse Services
15 or designee shall make periodic reports to the court as to the
16 competency of the defendant.

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

22 1. If found competent by the court or a jury after such
23 rehearing, criminal proceedings shall be resumed;
24

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

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

10 4. If the person is found to be incompetent for reasons other
11 than the person is a person requiring treatment as defined by Title
12 43A of the Oklahoma Statutes, and other than the person is mentally
13 retarded as defined in Title 10 of the Oklahoma Statutes, and is
14 also found to be not dangerous as defined by Section 1175.1 of this
15 title, the court shall issue the appropriate order as set forth in
16 Section 1175.6b of this title; or

17 5. 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, but is
21 also found to be dangerous as defined by Section 1175.1 of this
22 title, the court shall issue the appropriate order as set forth in
23 Section 1175.6c of this title.

1 D. If the person is found to be incompetent because the person
2 is a person requiring treatment as defined by Section 1-103 of Title
3 43A of the Oklahoma Statutes, but not capable of achieving
4 competence with treatment within a reasonable period of time as
5 defined by Section 1175.1 of this title, the court shall commence
6 civil commitment proceedings pursuant to Title 43A and shall dismiss
7 without prejudice the criminal proceeding. If the person is
8 subsequently committed to the Department of Mental Health and
9 Substance Abuse Services pursuant to Title 43A, the statute of
10 limitations for the criminal charges which were dismissed by the
11 court shall be tolled until the person is discharged from the
12 Department of Mental Health and Substance Abuse Services pursuant to
13 Section 7-101 of Title 43A of the Oklahoma Statutes.

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

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/14/2018 - DO
20 PASS.
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