

1 **SENATE FLOOR VERSION**

2 April 11, 2018

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 3283

By: Kannady of the House

and

6 Sparks of the Senate

7
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9 COMMITTEE SUBSTITUTE

10 [criminal procedure - verdicts in death penalty
11 cases - competency restoration services for certain
12 defendants - competency hearings and civil commitment
proceedings -

emergency]

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

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

18 Section 1007. The verdict of the jury must be entered upon the
19 minutes and thereupon the court must make and cause to be entered an
20 order reciting the fact of such inquiry and the result thereof, and
21 when it is found that the defendant is insane because of a mental
22 illness which causes the person to be presently unable (1) to have a
23 rational understanding as to why he or she is being executed and (2)
24 to have a rational understanding that he or she is to be executed

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

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

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

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

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

17 B. The Department of Mental Health and Substance Abuse Services
18 or designee shall make periodic reports to the court as to the
19 competency of the defendant.

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

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

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

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

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

19 5. If the person is found to be incompetent for reasons other
20 than the person is a person requiring treatment as defined by Title
21 43A of the Oklahoma Statutes, and other than the person is mentally
22 retarded as defined in Title 10 of the Oklahoma Statutes, but is
23 also found to be dangerous as defined by Section 1175.1 of this
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1 title, the court shall issue the appropriate order as set forth in
2 Section 1175.6c of this title.

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
22 April 11, 2018 - DO PASS AS AMENDED
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