

An Act

ENROLLED HOUSE
BILL NO. 3283

By: Kannady of the House

and

Sparks of the Senate

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.

SUBJECT: Criminal procedure

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 order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is insane because of a mental illness which causes the person to be presently unable (1) to have a rational understanding as to why he or she is being executed and (2) to have a rational understanding that he or she is to be executed and that execution is imminent, the court shall order ~~must direct~~

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

SECTION 2. AMENDATORY 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), is amended to read as follows:

Section 1175.6a A. If the person is found to be incompetent prior to conviction because he or she 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 order the Department of Mental Health and Substance Abuse Services to provide treatment, therapy or training which is calculated to allow the person to achieve competency. The Department may designate a willing entity to provide such competency restoration services on behalf of the Department, provided the entity has qualified personnel. The court shall further order the Department to take custody of the individual as soon as a forensic bed becomes available, unless both the Department and the county jail where the person is being held determine that it is in the best interests of the person to remain in the county jail. Such competency restoration services shall begin within a reasonable period of time after the court has determined that the person is not competent to stand trial.

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

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

C. If the person is determined by the Department of Mental Health and Substance Abuse Services or designee 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:

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

2. 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 or designee;

3. 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 1175.6b of this title;

4. 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 1175.6b of this title; or

5. 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 1175.6c of this title.

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

Passed the House of Representatives the 1st day of May, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 26th day of April, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____