

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1621

By: Worthen

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2021, Section 1161, which relates to insanity of
9 accused; modifying the Forensic Review Board;
10 amending 22 O.S. 2021, Section 1175.1, 1175.3,
11 1175.6, 1176.6b, and 1175.8 which relate to
12 determination of competence; adding the word
13 immediately in front of resume; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 22 O.S. 2021, Section 1161, is
17 amended to read as follows:

18 Section 1161. A. 1. An act committed by a person in a state
19 of mental illness or mental defect shall be adjudicated as guilty
20 with mental defect or as not guilty by reason of mental illness.

21 2. If a person is found guilty with mental defect or enters a
22 plea of guilty with mental defect which is accepted by the court,
23 the court at the time of sentencing shall impose any sentence that
24 could be imposed by law upon a person who is convicted of the same
offense, and the person shall serve the sentence in custody of a
county jail or the Oklahoma Department of Corrections.

1 3. If a person who is found guilty with mental defect is placed
2 on probation under the jurisdiction of the sentencing court as
3 provided by law, the court shall immediately issue an order for the
4 person to be examined by the Department of Mental Health and
5 Substance Abuse Services. The time and place of such examination
6 shall be determined by the Department. Within forty-five (45) days,
7 the Department shall provide to the court a recommendation of
8 treatment for the person, which shall be made a condition of
9 probation. Reports as specified by the trial judge shall be filed
10 with the probation officer and the sentencing court. Failure to
11 continue treatment, except by agreement with the treating agency and
12 the sentencing court, is grounds for revocation of probation.
13 Treatment shall be provided by an agency of the Department or, with
14 the approval of the sentencing court and at the expense of the
15 person, by private agencies, private physicians or other mental
16 health personnel. A psychiatric report shall be filed with the
17 probation officer and the sentencing court every six (6) months
18 during the period of probation.

19 4. When in any criminal action by indictment or information,
20 the defense of mental illness is raised, but the defendant is not
21 acquitted on the ground that the defendant was mentally ill at the
22 time of the commission of the crime charged, an issue concerning
23 such defense may be raised on appeal. If the appellate court finds
24 relief is required, the appellate court shall not have authority to

1 modify the judgment or sentence, but will only have the authority to
2 order a new trial or order resentencing without recommendations to
3 sentencing.

4 5. When in any criminal action by indictment or information the
5 defense of mental illness is interposed either singly or in
6 conjunction with some other defense, the jury shall state in the
7 verdict, if it is one of acquittal, whether or not the defendant is
8 acquitted on the ground of mental illness. When the defendant is
9 acquitted on the ground that the defendant was mentally ill at the
10 time of the commission of the crime charged, the person shall not be
11 discharged from custody until the court has made a determination
12 that the person is not dangerous to the public peace and safety and
13 is a person requiring treatment.

14 B. 1. To assist the court in its determination, the court
15 shall immediately issue an order for the person to be examined by
16 the Department of Mental Health and Substance Abuse Services at a
17 facility the Department has designated to examine and treat forensic
18 individuals. Upon the issuance of the order, the sheriff shall
19 deliver the person to the designated facility.

20 2. Within forty-five (45) days of the court entering such an
21 order, a hearing shall be conducted by the court to ascertain
22 whether the person is dangerous to the public peace or safety
23 because the person is a person requiring treatment or, if not, is in
24 need of continued supervision as a result of unresolved symptoms of

1 mental illness or a history of treatment noncompliance. During the
2 required period of hospitalization the Department of Mental Health
3 and Substance Abuse Services shall have the person examined by two
4 qualified psychiatrists or one such psychiatrist and one qualified
5 clinical psychologist whose training and experience enable the
6 professional to form expert opinions regarding mental illness,
7 competency, dangerousness and criminal responsibility.

8 C. 1. Each examiner shall, within thirty-five (35) days of
9 hospitalization, individually prepare and submit to the court, the
10 district attorney and the trial counsel of the person a report of
11 the psychiatric examination findings of the person and an evaluation
12 concerning whether the person is dangerous to the public peace or
13 safety.

14 2. If the court is dissatisfied with the reports or if a
15 disagreement on the issue of mental illness and dangerousness exists
16 between the two examiners, the court may designate one or more
17 additional examiners and have them submit their findings and
18 evaluations as specified in paragraph 1 of this subsection.

19 3. a. Within ten (10) days after the reports are filed, the
20 court must conduct a hearing to determine the present
21 condition of the person as to the issue of whether:
22 (1) the person is dangerous to the public peace or
23 safety because the person is a person requiring
24 treatment, or

1 (2) if not believed to be dangerous to the public
2 peace or safety, the person is in need of
3 continued supervision as a result of unresolved
4 symptoms of mental illness or a history of
5 treatment noncompliance.

6 b. The district attorney must establish the foregoing by
7 a preponderance of the evidence. At this hearing the
8 person shall have the assistance of counsel and may
9 present independent evidence.

10 D. 1. If the court finds that the person is not dangerous to
11 the public peace or safety because the person is a person requiring
12 treatment and is not in need of continued supervision as a result of
13 unresolved symptoms of mental illness or a history of treatment
14 noncompliance, it shall immediately discharge the person from
15 hospitalization.

16 2. If the court finds that the person is dangerous to the
17 public peace and safety, it shall commit the person to the custody
18 of the Department of Mental Health and Substance Abuse Services.
19 The person shall then be subject to discharge pursuant to the
20 procedure set forth in this section.

21 a. During the period of hospitalization, the Department
22 of Mental Health and Substance Abuse Services may
23 administer or cause to be administered to the person
24

1 such psychiatric, medical or other therapeutic
2 treatment as in its judgment should be administered.

3 b. The person shall be subject to discharge or
4 conditional release pursuant to the procedures set
5 forth in this section.

6 E. If at any time the court finds the person is not dangerous
7 to the public peace or safety because the person is a person
8 requiring treatment, but is in need of continued supervision as a
9 result of unresolved symptoms of mental illness or a history of
10 treatment noncompliance, the court may:

11 1. Discharge the person pursuant to the procedure set forth in
12 this section;

13 2. Discharge the person, and upon the motion of the court or
14 the district attorney commence civil involuntary commitment
15 proceedings against the person pursuant to the provisions of Title
16 43A of the Oklahoma Statutes; or

17 3. Order conditional release, as set forth in subsection F of
18 this section.

19 F. There is hereby created a Forensic Review Board to be
20 composed of seven (7) members appointed by the Governor with the
21 advice and consent of the Senate. The Board members shall serve for
22 a term of five (5) years ~~except that for members first appointed to~~
23 ~~the Board: one shall serve for a term ending December 31, 2008, two~~
24 ~~shall serve for a term ending December 31, 2009, two shall serve a~~

1 ~~term ending December 31, 2010, and two shall serve for a term ending~~
2 ~~December 31, 2011.~~

3 1. The Board shall be composed of:

4 a. four licensed mental health professionals with
5 experience in treating mental illness, ~~at least one of~~
6 ~~whom is licensed as a Doctor of Medicine, a Doctor of~~
7 ~~Osteopathy, or a licensed clinical psychologist and~~
8 shall be appointed from a list of seven names
9 submitted to the Governor by the Department of Mental
10 Health and Substance Abuse Services,

11 ~~b. one member who shall be an attorney licensed to~~
12 ~~practice in this state and shall be appointed from a~~
13 ~~list of not less than three names submitted to the~~
14 ~~Governor by the Board of Governors of the Oklahoma Bar~~
15 ~~Association,~~

16 ~~c. one member who shall be a retired judge licensed to~~
17 ~~practice in this state and shall be appointed from a~~
18 ~~list of not less than three names submitted to the~~
19 ~~Governor by the Judicial Nominating Committee, and~~

20 ~~d. b. one three at-large ~~member~~ members.~~

21 ~~The attorney and retired judge members of the Board shall be~~
22 ~~prohibited from representing in the courts of this state persons~~
23 ~~charged with felony offenses while serving on the Board.~~

24

1 2. The Board shall meet as necessary to determine which
2 individuals confined with the Department of Mental Health and
3 Substance Abuse Services are eligible for therapeutic visits,
4 conditional release or discharge and whether the Board wishes to
5 make such a recommendation to the court of the county where the
6 individual was found not guilty by reason of insanity or not guilty
7 by reason of mental illness for those persons adjudicated as such
8 upon or after November 1, 2016.

9 a. Forensic Review Board meetings shall not be considered
10 subject to the Oklahoma Open Meeting Act and are not
11 open to the public. Other than the Forensic Review
12 Board members, only the following individuals shall be
13 permitted to attend Board meetings:

- 14 (1) the individual the Board is considering for
15 therapeutic visits, conditional release or
16 discharge, his or her treatment advocate, and
17 members of his or her treatment team,
- 18 (2) the Commissioner of Mental Health and Substance
19 Abuse Services or designee,
- 20 (3) the Advocate General for the Department of Mental
21 Health and Substance Abuse Services or designee,
- 22 (4) the General Counsel for the Department of Mental
23 Health and Substance Abuse Services or designee,
24 and

1 (5) any other persons the Board and Commissioner of
2 Mental Health and Substance Abuse Services wish
3 to be present.

4 b. The Department of Mental Health and Substance Abuse
5 Services shall provide administrative staff to the
6 Board to take minutes of meetings and prepare
7 necessary documents and correspondence for the Board
8 to comply with its duties as set forth in this
9 section. The Department of Mental Health and
10 Substance Abuse Services shall also transport the
11 individuals being reviewed to and from the Board
12 meeting site.

13 c. The Board shall promulgate rules concerning the
14 granting and structure of therapeutic visits,
15 conditional releases and discharge.

16 d. For purposes of this subsection, "therapeutic visit"
17 means a scheduled time period off campus which
18 provides for progressive tests of the ability of the
19 consumer to maintain and demonstrate coping skills.

20 3. The Forensic Review Board shall submit any recommendation
21 for therapeutic visit, conditional release or discharge to the court
22 and district attorney of the county where the person was found not
23 guilty by reason of mental illness, the trial counsel of the person,
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1 the Department of Mental Health and Substance Abuse Services and the
2 person at least fourteen (14) days prior to the scheduled visit.

3 a. The district attorney may file an objection to a
4 recommendation for a therapeutic visit within ten (10)
5 days of receipt of the notice.

6 b. If an objection is filed, the therapeutic visit is
7 stayed until a hearing is held. The court shall hold
8 a hearing not less than ten (10) days following an
9 objection to determine whether the therapeutic visit
10 is necessary for treatment, and if necessary, the
11 nature and extent of the visit.

12 4. During the period of hospitalization the Department of
13 Mental Health and Substance Abuse Services shall submit an annual
14 report on the status of the person to the court, the district
15 attorney and the patient advocate general of the Department of
16 Mental Health and Substance Abuse Services.

17 G. Upon motion by the district attorney or upon a
18 recommendation for conditional release or discharge by the Forensic
19 Review Board, the court shall conduct a hearing to ascertain if the
20 person is dangerous and a person requiring treatment. This hearing
21 shall be conducted under the same procedure as the first hearing and
22 must occur not less than ten (10) days following the motion or
23 request by the Forensic Review Board.

1 1. If the court determines that the person continues to be
2 dangerous to the public peace and safety because the person is a
3 person requiring treatment, it shall order the return of the person
4 to the hospital for additional treatment.

5 2. If the court determines that the person is not dangerous but
6 subject to certain conditions, the court may conditionally release
7 the person subject to the following:

- 8 a. the Forensic Review Board has made a recommendation
9 for conditional release, including a written plan for
10 outpatient treatment and a list of recommendations for
11 the court to place as conditions on the release,
12 b. in its order of conditional release, the court shall
13 specify conditions of release and shall direct the
14 appropriate agencies or persons to submit annual
15 reports regarding the compliance of the person with
16 the conditions of release and progress in treatment,
17 c. the person must agree, in writing, that during the
18 period the person is granted conditional release and
19 is subject to the provisions thereof, there shall be
20 free transmission of all pertinent information,
21 including clinical information regarding the person,
22 among the Department of Mental Health and Substance
23 Abuse Services, the appropriate community mental
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1 health centers and the appropriate district attorneys,
2 law enforcement and court personnel,

3 d. the order of the court placing the person on
4 conditional release shall include notice that the
5 conditional release of the person may be revoked upon
6 good cause. The person placed on conditional release
7 shall remain under the supervision of the Department
8 of Mental Health and Substance Abuse Services until
9 the committing court enters a final discharge order.
10 The Department of Mental Health and Substance Abuse
11 Services shall assess the person placed on conditional
12 release annually and shall have the authority to
13 recommend discharge of the person to the Board, and

14 e. any agency or individual involved in providing
15 treatment with regard to the conditional release plan
16 of the person may prepare and file an affidavit under
17 oath if the agency or individual believes that the
18 person has failed to comply with the conditions of
19 release or that such person has progressed to the
20 point that inpatient care is appropriate.

21 (1) Any peace officer who receives such an affidavit
22 shall take the person into protective custody and
23 return the person to the forensic unit of the
24 state hospital.

1 (2) A hearing shall be conducted within three (3)
2 days, excluding holidays and weekends, after the
3 person is returned to the forensic unit of the
4 state hospital to determine if the person has
5 violated the conditions of release, or if full-
6 time hospitalization is the least restrictive
7 alternative consistent with the needs of the
8 person and the need for public safety. Notice of
9 the hearing shall be issued, at least twenty-four
10 (24) hours before the hearing, to the hospital
11 superintendent, the person, trial counsel for the
12 person, and the patient advocate general of the
13 Department of Mental Health and Substance Abuse
14 Services. If the person requires hospitalization
15 because of a violation of the conditions of
16 release or because of progression to the point
17 that inpatient care is appropriate, the court may
18 then modify the conditions of release.

19 3. If the court determines that the person is not dangerous to
20 the public peace or safety because the person is not a person
21 requiring treatment, it shall order that the person be discharged
22 from the custody of the Department of Mental Health and Substance
23 Abuse Services.

24 H. As used in this section:

1 1. "Antisocial personality disorder" means antisocial
2 personality disorder as defined by the Diagnostic and Statistical
3 Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent
4 editions;

5 2. "Court" or "sentencing court" means the court sitting in the
6 county where the person has been found to be not guilty by reason of
7 mental illness or guilty with mental defect;

8 3. "Dangerous" means a person who because of mental illness
9 poses a substantial risk of physical harm in the near future to
10 another person or persons. Dangerousness shall be determined by
11 such factors as whether the person has placed another person or
12 persons in a reasonable fear of violent behavior, and medication and
13 treatment compliance;

14 4. "Guilty with mental defect" means the person committed the
15 act and was either unable to understand the nature and consequences
16 of his or her actions or was unable to differentiate right from
17 wrong, and has been diagnosed with antisocial personality disorder
18 which substantially contributed to the act for which the person has
19 been charged;

20 5. "Mental defect" means the person has been diagnosed with
21 antisocial personality disorder which substantially contributed to
22 the act for which the person has been charged;

23 6. "Mental illness" means a substantial disorder of thought,
24 mood, perception, psychological orientation or memory that

1 significantly impairs judgment, behavior, capacity to recognize
2 reality or ability to meet the ordinary demands of life;

3 7. "Not guilty by reason of mental illness" means the person
4 committed the act while mentally ill and was either unable to
5 understand the nature and consequences of his or her actions or was
6 unable to differentiate right from wrong, and has not been diagnosed
7 with antisocial personality disorder which substantially contributed
8 to the act for which the person has been charged; and

9 8. a. "Person requiring treatment" means a person who
10 because of mental illness:

11 (1) poses a substantial risk of physical harm to self
12 as manifested by evidence or serious threats of
13 or attempts at suicide or other significant self-
14 inflicted bodily harm,

15 (2) poses a substantial risk of physical harm to
16 another person or persons as manifested by
17 evidence of violent behavior directed toward
18 another person or persons,

19 (3) has placed another person or persons in
20 reasonable fear of serious physical harm or
21 violent behavior directed toward such person or
22 persons as manifested by serious and immediate
23 threats,

24

1 (4) is in a condition of severe deterioration such
2 that, without immediate intervention, there
3 exists a substantial risk that severe impairment
4 or injury will result to the person, or

5 (5) poses a substantial risk of serious physical
6 injury to self or death as manifested by evidence
7 that the person is unable to provide for and is
8 not providing for his or her basic physical
9 needs.

10 b. The mental health or substance abuse history of the
11 person may be used as part of the evidence to
12 determine whether the person is a person requiring
13 treatment. The mental health or substance abuse
14 history of the person shall not be the sole basis for
15 this determination.

16 c. Unless a person also meets the criteria established in
17 subparagraph a of this paragraph, "person requiring
18 treatment" shall not mean:

19 (1) a person whose mental processes have been
20 weakened or impaired by reason of advanced years,
21 dementia or Alzheimer's disease,

22 (2) a person with intellectual or developmental
23 disability as defined in Title 10 of the Oklahoma
24 Statutes,

1 (3) a person with seizure disorder, or

2 (4) a person with a traumatic brain injury.

3 I. Proceedings hereunder may be held in conformance with the
4 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for
5 allowable use of videoconferencing.

6 SECTION 2. AMENDATORY 22 O.S. 2021, Section 1175.1, is
7 amended to read as follows:

8 Section 1175.1 As used in Sections 1175.1 through 1176 of this
9 title:

10 1. "Competent" or "competency" means the present ability of a
11 person arrested for or charged with a crime to understand the nature
12 of the charges and proceedings brought against him or her and to
13 effectively and rationally assist in his or her defense;

14 2. "Incompetent" or "incompetency" means the present inability
15 of a person arrested for or charged with a crime to understand the
16 nature of the charges and proceedings brought against him or her and
17 to effectively and rationally assist in his or her defense;

18 3. "Dangerous" means a person who is a person requiring
19 treatment as defined in Section 1-103 of Title 43A of the Oklahoma
20 Statutes;

21 4. "Criminal proceeding" means every stage of a criminal
22 prosecution after arrest and before judgment, including, but not
23 limited to, interrogation, lineup, preliminary hearing, motion
24 dockets, discovery, pretrial hearings and trial;

1 5. "Qualified forensic examiner" means any:

- 2 a. psychiatrist with forensic training and experience,
- 3 b. psychologist with forensic training and experience, or
- 4 c. a licensed mental health professional whose forensic
- 5 training and experience enable him or her to form
- 6 expert opinions regarding mental illness, competency
- 7 and dangerousness and who has been approved to render
- 8 such opinions by the court;

9 6. "Reasonable period of time" means a period that starts on
10 the first day of treatment and not to exceed the lesser of:

- 11 a. ~~the maximum sentence specified for the most serious~~
- 12 ~~offense with which the defendant is charged, or for a~~
- 13 misdemeanor offense, no longer than a six (6) month
- 14 period;
- 15 b. ~~a maximum period of two (2) years; and~~ for a felony
- 16 offense, no longer than a period of one (1) year; or
- 17 c. maximum period of the length of sentence;

18 7. "Public guardian" means the Office of Public Guardian as
19 established under the Oklahoma Public Guardianship Act in Section 6-
20 101 et seq. of Title 30 of the Oklahoma Statutes.

21 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1175.3, is
22 amended to read as follows:

23 Section 1175.3 A. Upon filing of an application for
24 determination of competency, the court shall set a hearing date,

1 which shall be as soon as practicable, but at least one (1) day
2 after service of notice as provided by Section 1175.2 of this title.

3 B. The court shall hold a hearing on the date provided. At the
4 hearing, the court shall examine the application for determination
5 of competency to determine if it alleges facts sufficient to raise a
6 doubt as to the competency of the person. Any additional evidence
7 tending to create a doubt as to the competency of the person may be
8 presented at this hearing.

9 C. If the court finds there is no doubt as to the competency of
10 the person, it shall order the criminal proceedings to immediately
11 resume.

12 D. 1. a. If the court finds there is a doubt as to the
13 competency of the person, it shall order the person to
14 be examined by the Department of Mental Health and
15 Substance Abuse Services or by a qualified forensic
16 examiner designated by the Department to perform
17 competency examinations.

18 b. In addition, the Developmental Disabilities Services
19 Division of the Department of Human Services shall
20 receive written notice from the district attorney who
21 filed the criminal petition, and be authorized by
22 order of the court to have a psychologist or other
23 appropriate clinician participate with professionals
24 assigned by any other public or private agency in any

1 competency evaluation wherein developmental or
2 intellectual disability may be involved. The
3 psychologist or clinician employed, by contract or
4 otherwise, by the Department of Human Services may
5 issue a separate opinion and recommendation to the
6 court.

7 2. The person shall be examined by a qualified forensic
8 examiner on an outpatient basis prior to referral for any necessary
9 inpatient evaluation, as ordered by the court. The outpatient
10 examination may be conducted in the community, the jail or detention
11 facility where the person is held.

12 3. If the court determines that the person whose competency is
13 in question may be dangerous as defined in Section 1175.1 of this
14 title, it shall order the person retained in a secure facility until
15 the completion of the competency hearing provided in Section 1175.4
16 of this title. If the court determines the person may be dangerous
17 as defined in Section 1175.1 of this title because the individual is
18 a person requiring treatment as defined in Section 1-103 of Title
19 43A of the Oklahoma Statutes, it may commit the person to the
20 custody of the Department of Mental Health and Substance Abuse
21 Services or any other state agency or private facility for the
22 examination required by this subsection. The person shall be
23 required to undergo examination for a period of time sufficient for
24 the qualified forensic examiner(s) to reach a conclusion as to

1 competency, and the court shall impose a reasonable time limitation
2 for such period of examination.

3 E. The qualified forensic examiner(s) shall receive
4 instructions that they shall examine the patient to determine:

5 1. If the person is able to appreciate the nature of the
6 charges made against such person;

7 2. If the person is able to consult with the lawyer and
8 rationally assist in the preparation of the defense of such person;

9 3. If the person is unable to appreciate the nature of the
10 charges or to consult and rationally assist in the preparation of
11 the defense, whether the person can attain competency within a
12 reasonable period of time as defined in Section 1175.1 of this title
13 if provided with a course of treatment, therapy or training;

14 4. If the person is a person requiring treatment as defined by
15 Section 1-103 of Title 43A of the Oklahoma Statutes;

16 5. If the person is incompetent because the person is
17 intellectually disabled as defined in Section 1408 of Title 10 of
18 the Oklahoma Statutes;

19 6. If the answers to questions 4 and 5 are no, why the
20 defendant is incompetent; and

21 7. If the person were released, whether such person would
22 presently be dangerous as defined in Section 1175.1 of this title.

23 F. Upon completion of the competency evaluation, the Department
24 of Mental Health and Substance Abuse Services or qualified forensic

1 examiner designated by the Department to perform competency
2 examinations shall notify the court of its findings. If the person
3 is in the custody of the Department of Mental Health and Substance
4 Abuse Services, the person shall be returned to the court in the
5 customary manner within five (5) business days. If the person is
6 not returned within that time, the county in which the proceedings
7 are to be held shall pay the costs of maintaining the person at the
8 institution or facility for the period of time the person remains at
9 the institution or facility in excess of the five-day period.

10 SECTION 4. AMENDATORY 22 O.S. 2021, Section 1175.6, is
11 amended to read as follows:

12 Section 1175.6 Upon the finding by the jury or the court as
13 provided by Section 1175.5 of this title, the court shall issue the
14 appropriate order regarding the person as follows:

15 1. If the person is found to be competent, the criminal
16 proceedings shall be immediately resumed;

17 2. If the person is found to be incompetent because the person
18 is a person requiring treatment as defined in Title 43A of the
19 Oklahoma Statutes, the court shall issue the appropriate order as
20 set forth in Section 1175.6a of this title;

21 3. If the person is found to be incompetent because the person
22 is intellectually disabled as defined in Section 1408 of Title 10 of
23 the Oklahoma Statutes, the court shall issue the appropriate order
24 as set forth in Section 1175.6b of this title; and

1 4. If the person is found to be incompetent for reasons other
2 than the person is a person requiring treatment as defined by
3 Section 1-103 of Title 43A of the Oklahoma Statutes, or for reasons
4 other than the person is intellectually disabled as defined in
5 Section 1408 of Title 10 of the Oklahoma Statutes, the court shall
6 issue the appropriate order as set forth in Section 1175.6c of this
7 title.

8 SECTION 5. AMENDATORY 22 O.S. 2021, Section 1175.6b, is
9 amended to read as follows:

10 Section 1175.6b A. If the person is found to be incompetent
11 primarily because the person is intellectually disabled as defined
12 in Section 1408 of Title 10 of the Oklahoma Statutes, and is also
13 found by the court to be dangerous as defined by Section 1175.1 of
14 this title, the court shall suspend the criminal proceedings, and
15 shall place the person into the custody of the Office of Public
16 Guardian. The Office of Public Guardian shall act with all powers
17 set forth in the Oklahoma Public Guardianship Act, and:

18 1. The Office of Public Guardian shall place any person placed
19 in its custody under this title in a facility or residential
20 setting, private or public, willing to accept the individual and
21 that has a level of supervision and security that is appropriate to
22 the needs of the person;

23 2. Such placements shall be within the sole discretion of the
24 Office of Public Guardian;

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

4 4. The Office of Public Guardian shall report to the court at
5 least every six (6) months as to the status of the person including,
6 but not limited to, the type of placement, services provided, level
7 of supervision, the medical and psychological health of the person,
8 whether the person would be dangerous if conditionally released into
9 a nonsecure environment, the assistance and services that would be
10 required for such conditional release and whether the person has
11 achieved competency;

12 5. If the person is determined by the Office of Public Guardian
13 to have regained competency or that conditional release to a private
14 guardian or other caretaker is appropriate, a hearing shall be
15 scheduled within twenty (20) days. If found competent by the court
16 or a jury after such rehearing, criminal proceedings shall be
17 resumed. If the court finds conditional release to be appropriate,
18 the court shall make an appropriate order for conditional release;
19 and

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

23 B. If the person is found to be incompetent for reasons other
24 than the person is a person requiring treatment as defined by

1 Section 1-103 of Title 43A of the Oklahoma Statutes and is found to
2 be not dangerous as defined by Section 1175.1 of this title, the
3 court shall suspend the criminal proceedings and either refer the
4 person to the Department of Human Services for consideration of
5 voluntary assistance or conditionally release the person as set
6 forth in this section.

7 1. For any person recommended for conditional release, a
8 written plan for services shall be prepared by the Department of
9 Human Services and filed with the court. In its order of
10 conditional release, the court shall specify the conditions of
11 release and shall direct the appropriate agencies or persons to
12 submit annual reports regarding the person's compliance with the
13 conditions of release and progress:

14 a. to be eligible for conditional release, the person
15 shall agree, in writing, that during the period the
16 person is granted conditional release and is subject
17 to the provisions thereof, there shall be free
18 transmission of all pertinent information, including
19 clinical information regarding the person, among the
20 person's treatment providers, the appropriate district
21 attorneys, law enforcement and court personnel. To
22 effect this agreement, the person shall execute any
23 releases required by law to allow for the
24 dissemination of this information,

1 b. the court's order placing the person on conditional
2 release shall include notice that the person's
3 conditional release may be revoked upon good cause,
4 c. the district attorney, as well as any agency or
5 individual involved in providing services with regard
6 to the person's conditional release, may prepare and
7 file an affidavit under oath if the district attorney,
8 agency, or individual believes that the person has
9 failed to comply with the conditions of release. The
10 court shall then conduct a hearing to determine if the
11 person has violated the conditions of release. Notice
12 of the hearing shall be issued, at least twenty-four
13 (24) hours before the hearing, to the Department of
14 Human Services, the person, trial counsel for the
15 person, and the client advocate general of the
16 Department of Human Services. After reviewing the
17 evidence concerning any alleged violation of the
18 conditions of the release, the person's progress,
19 treatment alternatives, and the need for public
20 safety, the court may order no change to the
21 conditions for the person's release or modify the
22 conditions of release, and

1 d. the person placed on conditional release shall remain
2 in a conditional release status until the reviewing
3 court issues a full release from all conditions.

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

7 a. if found competent by the court or a jury after such
8 rehearing, criminal proceedings shall be immediately
9 resumed,

10 b. if the person is found to continue to be incompetent,
11 the person shall be returned to either conditional
12 release or referred to the Department of Human
13 Services for consideration of voluntary assistance.

14 SECTION 6. AMENDATORY 22 O.S. 2021, Section 1175.8, is
15 amended to read as follows:

16 Section 1175.8 If the medical supervisor reports that the
17 person appears to have achieved competency after a finding of
18 incompetency, the court shall hold another competency hearing to
19 determine if the person has achieved competency. If competency has
20 been achieved, the criminal proceedings shall be immediately
21 resumed.

22 SECTION 7. This act shall become effective November 1, 2023.

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24 59-1-6033 TJ 12/30/22