

1 ENGROSSED SENATE
2 BILL NO. 1089

By: Rosino of the Senate

and

3
4 Lawson of the House

5
6 An Act relating to determination of competency;
7 amending 22 O.S. 2021, Sections 1175.1, as amended by
8 Section 1, Chapter 73, O.S.L. 2024, and 1175.6a (22
9 O.S. Supp. 2024, Section 1175.1), which relate to
10 definitions and persons capable of achieving
11 competence; modifying definition; directing court to
12 conduct competency proceedings for certain persons;
13 establishing procedures for court to conduct
14 competency proceedings for certain persons; requiring
15 criminal proceedings to resume upon certain
16 determination; requiring additional competency
17 restoration services upon certain determination;
18 requiring commencement of civil commitment
19 proceedings upon certain determination; tolling
20 statute of limitations under certain circumstances;
21 amending 43A O.S. 2021, Sections 1-103, as last
22 amended by Section 1, Chapter 96, O.S.L. 2024, and 7-
23 101 (43A O.S. Supp. 2024, Section 1-103), which
24 relate to definitions and discharge or permission to
leave facility; modifying definition; establishing
requirements for certain civil commitment upon
dismissal of certain criminal charges; requiring
certain reporting by Department of Mental Health and
Substance Abuse Services; requiring certain notice;
authorizing filing of certain objection; establishing
procedures for hearing on certain discharge;
requiring appointment of counsel under certain
circumstances; requiring court to make certain
determination; authorizing appeal of certain court
order; authorizing stay of certain order;
establishing standards for certain review; clarifying
applicability of provisions; updating statutory
references; updating statutory language; and
providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 1175.1, as amended by Section 1, Chapter 73, O.S.L. 2024 (22 O.S. Supp. 2024, Section 1175.1), is amended to read as follows:

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

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

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

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

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

1 5. "Public guardian" means the Office of Public Guardian as
2 established under the Oklahoma Public Guardianship Act in Section 6-
3 101 et seq. of Title 30 of the Oklahoma Statutes;

4 6. "Qualified forensic examiner" means any:

- 5 a. psychiatrist with forensic training and experience,
- 6 b. psychologist with forensic training and experience, or
- 7 c. a licensed mental health professional whose forensic
8 training and experience enable him or her to form
9 expert opinions regarding mental illness, competency
10 and dangerousness and who has been approved to render
11 such opinions by the court; provided, however, a
12 licensed mental health professional shall not be
13 qualified to issue expert opinions as to competency or
14 dangerousness in cases in which a person is alleged to
15 be incompetent due to intellectual disability; and

16 7. "Reasonable period of time" means a period not to exceed the
17 lesser of:

- 18 a. the maximum sentence specified for the most serious
19 offense with which the defendant is charged, or
- 20 b. a maximum period of two (2) years.

21 Any time period where the defendant refuses medication
22 prescribed or ordered that is designed to restore the defendant to
23 competency shall not be used in the calculation of a reasonable
24 period of time.

1 SECTION 2. AMENDATORY 22 O.S. 2021, Section 1175.6a, is
2 amended to read as follows:

3 Section 1175.6a. A. If the person is found to be incompetent
4 prior to conviction because he or she is a person requiring
5 treatment as defined in Section 1-103 of Title 43A of the Oklahoma
6 Statutes, but capable of achieving competence with treatment within
7 a reasonable period of time as defined by Section 1175.1 of this
8 title, the court shall suspend the criminal proceedings and order
9 the Department of Mental Health and Substance Abuse Services to
10 provide treatment, therapy or training which is calculated to allow
11 the person to achieve competency. The Department may designate a
12 willing entity to provide such competency restoration services on
13 behalf of the Department, provided the entity has qualified
14 personnel. The court shall further order the Department to take
15 custody of the individual as soon as a forensic bed becomes
16 available, unless both the Department and the county jail where the
17 person is being held determine that it is in the best interests of
18 the person to remain in the county jail. Such competency
19 restoration services shall begin within a reasonable period of time
20 after the court has determined that the person is not competent to
21 stand trial.

22 The person shall remain in the custody of the county jail until
23 such time as the Department has a bed available at the forensic
24 facility unless competency restoration services are provided by a

1 designee of the Department, in which case custody of the person
2 shall be transferred to the Department.

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

6 C. If the person is determined by the Department of Mental
7 Health and Substance Abuse Services or designee to have regained
8 competency, or is no longer incompetent because the person is a
9 person requiring treatment as defined by Section 1-103 of Title 43A
10 of the Oklahoma Statutes, a hearing shall be scheduled within twenty
11 (20) days:

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

14 2. If the person is found to continue to be incompetent because
15 the person is a person requiring treatment as defined in Section 1-
16 103 of Title 43A of the Oklahoma Statutes, the person shall be
17 returned to the custody of the Department of Mental Health and
18 Substance Abuse Services or designee;

19 3. If the person is found to be incompetent because the person
20 is ~~intellectually disabled~~ an individual with intellectual
21 disability as defined by Section 1408 of Title 10 of the Oklahoma
22 Statutes, the court shall issue the appropriate order as set forth
23 in Section 1175.6b of this title;

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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, and other than
4 the person is ~~intellectually disabled~~ an individual with
5 intellectual disability as defined in Section 1408 of Title 10 of
6 the Oklahoma Statutes, and is also found to be not dangerous as
7 defined by Section 1175.1 of this title, the court shall issue the
8 appropriate order as set forth in Section 1175.6b of this title; or

9 5. If the person is found to be incompetent for reasons other
10 than the person is a person requiring treatment as defined by
11 Section 1-103 of Title 43A of the Oklahoma Statutes, and other than
12 the person is ~~intellectually disabled~~ an individual with
13 intellectual disability as defined in Section 1408 of Title 10 of
14 the Oklahoma Statutes, but is also found to be dangerous as defined
15 by Section 1175.1 of this title, the court shall issue the
16 appropriate order as set forth in Section 1175.6c of this title.

17 D. If the person is found to be incompetent because the person
18 is a person requiring treatment as defined by Section 1-103 of Title
19 43A of the Oklahoma Statutes, but not capable of achieving
20 competence with treatment within a reasonable period of time as
21 defined by Section 1175.1 of this title, the court shall commence
22 civil commitment proceedings pursuant to Title 43A of the Oklahoma
23 Statutes and shall dismiss without prejudice the criminal
24 proceeding. If the person is subsequently committed to the

1 Department of Mental Health and Substance Abuse Services pursuant to
2 Title 43A of the Oklahoma Statutes, the statute of limitations for
3 the criminal charges which were dismissed by the court shall be
4 tolled until the person is discharged from the Department of Mental
5 Health and Substance Abuse Services pursuant to Section 7-101 of
6 Title 43A of the Oklahoma Statutes.

7 E. For a person undergoing competency restoration services,
8 within thirty (30) days after the expiration of the reasonable
9 period of time as defined by Section 1175.1 of this title, the court
10 shall hold a hearing to determine whether the person has been
11 restored to competency.

12 1. No less than fifteen (15) days prior to the hearing the
13 Department of Mental Health and Substance Abuse Services shall
14 submit a report to the court, the person's attorney, and the
15 prosecuting agency detailing the person's status and progress in
16 being restored to competency including the person's historical and
17 current compliance with medication and treatment and a plan for
18 competency restoration if additional competency restoration services
19 are ordered by the court.

20 2. If the court determines that the person has been restored to
21 competency, the criminal proceedings shall resume.

22 3. If the court determines that the person has not been
23 restored to competency, the court shall determine whether additional
24 competency restoration services are likely to be beneficial in

1 restoring the person to competency. If the court finds by a
2 preponderance of the evidence that additional competency restoration
3 services are:

4 a. likely to be beneficial in restoring the person to
5 competency, the court shall order the person to remain
6 in or be transferred to the custody of the Department
7 which shall continue to provide treatment, therapy, or
8 training calculated to restore the person to
9 competency for a period of time not to exceed the
10 lesser of an additional two (2) years or the maximum
11 sentence specified for the most serious offense with
12 which the defendant is charged, or

13 b. not likely to be beneficial in restoring the person to
14 competency, the court shall commence civil commitment
15 proceedings pursuant to Title 43A of the Oklahoma
16 Statutes and shall dismiss without prejudice the
17 criminal proceeding. If the person is subsequently
18 committed to the Department pursuant to Title 43A of
19 the Oklahoma Statutes, the statute of limitations for
20 the criminal charges which were dismissed by the court
21 shall be tolled until the person is discharged from
22 the Department pursuant to Section 7-101 of Title 43A
23 of the Oklahoma Statutes.

1 SECTION 3. AMENDATORY 43A O.S. 2021, Section 1-103, as
2 last amended by Section 1, Chapter 96, O.S.L. 2024 (43A O.S. Supp.
3 2024, Section 1-103), is amended to read as follows:

4 Section 1-103. When used in this title, unless otherwise
5 expressly stated, or unless the context or subject matter otherwise
6 requires:

7 1. "Department" means the Department of Mental Health and
8 Substance Abuse Services;

9 2. "Chair" means the chair of the Board of Mental Health and
10 Substance Abuse Services;

11 3. "Mental illness" means a substantial disorder of thought,
12 mood, perception, psychological orientation or memory that
13 significantly impairs judgment, behavior, capacity to recognize
14 reality or ability to meet the ordinary demands of life;

15 4. "Board" means the Board of Mental Health and Substance Abuse
16 Services as established by the Mental Health Law;

17 5. "Commissioner" means the Commissioner of Mental Health and
18 Substance Abuse Services;

19 6. "Indigent person" means a person who does not have
20 sufficient assets or resources to support the person and to support
21 members of the family of the person lawfully dependent on the person
22 for support;

23 7. "Facility" means any hospital, school, building, house or
24 retreat, authorized by law to have the care, treatment or custody of

1 an individual with mental illness, drug or alcohol dependency,
2 gambling addiction, or an eating disorder including, but not limited
3 to, public or private hospitals, community mental health centers,
4 clinics, satellites, and community-based structured crisis centers;
5 provided, that facility shall not mean a child guidance center
6 operated by the State Department of Health;

7 8. "Consumer" means a person under care or treatment in a
8 facility pursuant to the Mental Health Law, or in an outpatient
9 status;

10 9. "Care and treatment" means medical care and behavioral
11 health services, as well as food, clothing and maintenance,
12 furnished to a person;

13 10. Whenever in this law or in any other law, or in any rule or
14 order made or promulgated pursuant to this law or to any other law,
15 or in the printed forms prepared for the admission of consumers or
16 for statistical reports, the words "insane", "insanity", "lunacy",
17 "mentally sick", "mental disease" or "mental disorder" are used,
18 such terms shall have equal significance to the words "mental
19 illness";

20 11. "Licensed mental health professional" means:

- 21 a. a psychiatrist who is a diplomate of the American
22 Board of Psychiatry and Neurology,
- 23 b. a psychiatrist who is a diplomate of the American
24 Osteopathic Board of Neurology and Psychiatry,

- 1 c. a physician licensed pursuant to the Oklahoma
2 Allopathic Medical and Surgical Licensure and
3 Supervision Act or the Oklahoma Osteopathic Medicine
4 Act,
- 5 d. a clinical psychologist who is duly licensed to
6 practice by the State Board of Examiners of
7 Psychologists,
- 8 e. a professional counselor licensed pursuant to the
9 Licensed Professional Counselors Act,
- 10 f. a person licensed as a clinical social worker pursuant
11 to the provisions of the Social Worker's Licensing
12 Act,
- 13 g. a licensed marital and family therapist as defined in
14 the Marital and Family Therapist Licensure Act,
- 15 h. a licensed behavioral practitioner as defined in the
16 Licensed Behavioral Practitioner Act,
- 17 i. an advanced practice nurse as defined in the Oklahoma
18 Nursing Practice Act,
- 19 j. a physician's assistant who is licensed in good
20 standing in this state, or
- 21 k. a licensed alcohol and drug counselor/mental health
22 (LADC/MH) as defined in the Licensed Alcohol and Drug
23 Counselors Act;
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1 12. "Mentally incompetent person" means any person who has been
2 adjudicated mentally or legally incompetent by an appropriate
3 district court;

4 13. a. "Person requiring treatment" means a person who
5 because of his or her mental illness or drug or
6 alcohol dependency meets at least one of the
7 following:

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

12 (2) poses a substantial risk of immediate physical
13 harm to another person or persons as manifested
14 by evidence of violent behavior directed toward
15 another person or persons,

16 (3) has placed another person or persons in a
17 reasonable fear of violent behavior directed
18 towards such person or persons or serious
19 physical harm to them as manifested by serious
20 and immediate threats,

21 (4) is in a condition of severe deterioration that is
22 continuing, as has been observed within the
23 previous ~~seventy-two (72) hour~~ seventy-two-hour
24 period such that, without immediate intervention,

1 there exists a substantial risk that severe
2 impairment or injury will result to the person,
3 or

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

9 b. To the extent it is reasonably available, the relevant
10 mental health or substance abuse history of the person
11 shall be considered and may be proffered as part of
12 the evidence to determine whether the person is a
13 person requiring treatment or an assisted outpatient.
14 The mental health or substance abuse history of the
15 person shall not be the sole basis for this
16 determination.

17 c. In determining whether the person is a person
18 requiring treatment, the following shall also be
19 considered along with any other relevant information:

20 (1) the person's history of violence or criminal acts
21 including unadjudicated criminal acts if evidence
22 of the person's culpability is evident or
23 established,

- (2) the person's history of compliance with mental and behavioral health medication and treatment,
- (3) the probability and result of the person's noncompliance with medication and treatment if not committed,
- (4) the consumer's history of using weapons in an illegal or unsafe manner, and
- (5) any previous instances of harm, attempted harm, or threatened harm to self or others.

d. Unless a person also meets the criteria established in subparagraph a ~~or~~, b, or c of this paragraph, "person requiring treatment" or an "assisted outpatient" shall not mean:

- (1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,
- (2) a person who is an individual with intellectual disability or developmental disability as defined in Section 1408 of Title 10 of the Oklahoma Statutes,
- (3) a person with seizure disorder,
- (4) a person with a traumatic brain injury, or
- (5) a person who is homeless.

1 ~~d.~~ e. (1) A person who meets the criteria established
2 in this paragraph but who is medically unstable
3 may be discharged and transported in accordance
4 with Section 1-110 of this title. Alternatively,
5 if the facility holding the person is able to
6 treat the additional medical conditions of that
7 person, the facility may treat the additional
8 medical conditions in an effort to medically
9 stabilize the patient.

10 (2) If the facility holding the person is unable to
11 treat the additional medical conditions of a
12 person who meets the criteria established in this
13 paragraph, the patient shall be discharged and
14 transported in accordance with Section 1-110 of
15 this title.

16 (3) All time elapsed during medical stabilization
17 tolls the ~~twelve (12) hour~~ twelve-hour time for
18 an initial assessment pursuant to paragraph 1 of
19 subsection A of Section 5-208 of this title, and
20 the one-hundred-twenty-hour emergency detention
21 time pursuant to paragraph 3 of subsection A of
22 Section 5-208 of this title;

1 14. "Petitioner" means a person who files a petition alleging
2 that an individual is a person requiring treatment or an assisted
3 outpatient;

4 15. "Executive director" means the person in charge of a
5 facility as defined in this section;

6 16. "Private hospital or facility" means any general hospital
7 maintaining a neuro-psychiatric unit or ward, or any private
8 hospital or facility for care and treatment of a person having a
9 mental illness, which is not supported by the state or federal
10 government. The term "private hospital" or "facility" shall not
11 include nursing homes or other facilities maintained primarily for
12 the care of elderly and disabled persons;

13 17. "Individualized treatment plan" means a proposal developed
14 during the stay of an individual in a facility, under the provisions
15 of this title, which is specifically tailored to the treatment needs
16 of the individual. Each plan shall clearly include the following:

17 a. a statement of treatment goals or objectives, based
18 upon and related to a clinical evaluation, which can
19 be reasonably achieved within a designated time
20 interval,

21 b. treatment methods and procedures to be used to obtain
22 these goals, which methods and procedures are related
23 to each of these goals and which include specific
24 prognosis for achieving each of these goals,

- 1 c. identification of the types of professional personnel
2 who will carry out the treatment procedures including
3 appropriate medical or other professional involvement
4 by a physician or other health professional properly
5 qualified to fulfill legal requirements mandated under
6 state and federal law,
- 7 d. documentation of involvement by the individual
8 receiving treatment and, if applicable, the accordance
9 of the individual with the treatment plan, and
- 10 e. a statement attesting that the executive director of
11 the facility or clinical director has made a
12 reasonable effort to meet the plan's individualized
13 treatment goals in the least restrictive environment
14 possible closest to the home community of the
15 individual;

16 18. "Telemedicine" means technology-enabled health and care
17 management and delivery systems that extend capacity and access,
18 which includes:

- 19 a. synchronous mechanisms, which may include live
20 audiovisual interaction between a patient and a health
21 care professional or real-time provider to provider
22 consultation through live interactive audiovisual
23 means,
- 24

1 b. asynchronous mechanisms, which include store and
2 forward transfers, online exchange of health
3 information between a patient and a health care
4 professional and online exchange of health information
5 between health care professionals, but shall not
6 include the use of automated text messages or
7 automated mobile applications that serve as the sole
8 interaction between a patient and a health care
9 professional,

10 c. remote patient monitoring, and

11 d. other electronic means that support clinical health
12 care, professional consultation, patient and
13 professional health-related education, public health
14 and health administration;

15 19. "Recovery and recovery support" means nonclinical services
16 that assist individuals and families to recover from alcohol or drug
17 problems. They include social support, linkage to and coordination
18 among allied service providers including but not limited to
19 transportation to and from treatment or employment, employment
20 services and job training, case management and individual services
21 coordination, life skills education, relapse prevention, housing
22 assistance, child care, and substance abuse education;

23 20. "Assisted outpatient" means a person who:
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- 1 a. is either currently under the care of a facility
2 certified by the Department of Mental Health and
3 Substance Abuse Services as a ~~Community Mental Health~~
4 ~~Center~~ community mental health center, or is being
5 discharged from the custody of the ~~Oklahoma~~ Department
6 of Corrections, or is being discharged from a
7 residential placement by the Office of Juvenile
8 Affairs,
- 9 b. is suffering from a mental illness,
- 10 c. is unlikely to survive safely in the community without
11 supervision, based on a clinical determination,
- 12 d. has a history of lack of compliance with treatment for
13 mental illness that has:
- 14 (1) prior to the filing of a petition, at least twice
15 within the last thirty-six (36) months been a
16 significant factor in necessitating
17 hospitalization or treatment in a hospital or
18 residential facility including admission to a
19 community-based structured crisis center as
20 certified by the ~~Oklahoma~~ Department of Mental
21 Health and Substance Abuse Services, or receipt
22 of services in a forensic or other mental health
23 unit of a correctional facility, or a specialized
24 treatment plan for treatment of mental illness in

1 a secure juvenile facility or placement in a
2 specialized residential program for juveniles, or
3 (2) prior to the filing of the petition, resulted in
4 one or more acts of serious violent behavior
5 toward self or others or threats of, or attempts
6 at, serious physical harm to self or others
7 within the last twenty-four (24) months,

8 e. is, as a result of his or her mental illness, unlikely
9 to voluntarily participate in outpatient treatment
10 that would enable him or her to live safely in the
11 community,

12 f. in view of his or her treatment history and current
13 behavior, is in need of assisted outpatient treatment
14 in order to prevent a relapse or deterioration which
15 would be likely to result in serious harm to the
16 person or persons ~~as defined in this section~~, and

17 g. is likely to benefit from assisted outpatient
18 treatment;

19 21. "Assisted outpatient treatment" means outpatient services
20 which have been ordered by the court pursuant to a treatment plan
21 approved by the court to treat an assisted outpatient's mental
22 illness and to assist the person in living and functioning in the
23 community, or to attempt to prevent a relapse or deterioration that
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1 may reasonably be predicted to result in suicide or the need for
2 hospitalization; and

3 22. "Urgent recovery clinic" means a clinic that offers
4 voluntary services aimed at the assessment and immediate
5 stabilization of acute symptoms of mental illness, alcohol and other
6 drug abuse, and emotional distress. Unless the person receiving
7 treatment consents to a longer duration or unless the person is
8 placed into emergency detention under Sections 5-206 through 5-209
9 of this title, no more than twenty-three (23) hours and fifty-nine
10 (59) minutes of services may be provided to a consumer during one
11 episode of care at an urgent recovery clinic.

12 SECTION 4. AMENDATORY 43A O.S. 2021, Section 7-101, is
13 amended to read as follows:

14 Section 7-101. A. The person in charge of a facility within
15 the Department of Mental Health and Substance Abuse Services shall
16 discharge a consumer or permit the consumer to leave the facility as
17 provided in this section.

18 B. The person in charge shall discharge a consumer:

19 1. Who is no longer a risk to self or others as ~~defined in~~
20 provided by Section 1-103 of this title;

21 2. Who is capable of surviving safely in freedom alone or with
22 the help of other state agencies, private entities, or willing and
23 responsible family members or friends; provided, however, nothing in
24 this section or Section 7-102 of this title shall be construed as

1 requiring any state agency or private entity to provide services
2 except as voluntarily agreed to by the agency and consumer; and

3 3. For whom a discharge plan has been developed pursuant to the
4 provisions of Section 7-102 of this title.

5 C. The person in charge may grant a convalescent leave or
6 visiting status to a consumer in accordance with policies prescribed
7 by the Commissioner of Mental Health and Substance Abuse Services.

8 The facility granting a convalescent leave or visiting status to a
9 consumer has no responsibility in returning the consumer to the
10 facility should such become necessary. A convalescent leave or
11 visiting status may be granted rather than a discharge when the
12 complete recovery of the consumer can be determined only by
13 permitting the consumer to leave the facility. The person in charge
14 shall discharge a consumer who has not returned to the facility
15 within twelve (12) months from the time a convalescent leave or
16 visiting status was granted. Any return from convalescent leave or
17 visiting status must be on a voluntary basis.

18 D. In accordance with policies prescribed by the Commissioner, a
19 person in charge may transfer a consumer to an outpatient or other
20 nonhospital status when, in the opinion of the person in charge, such
21 transfer will not be detrimental to the public welfare or injurious
22 to the consumer and the necessary treatment may be continued on that
23 basis; provided, however, that before transferring the consumer, the
24 person in charge shall ensure that appropriate financial resources

1 and appropriate services are available to receive and care for such
2 consumer after such transfer.

3 E. The person in charge of the facility shall notify the court
4 that committed the consumer that the consumer has been discharged.
5 Such notification shall be within forty-eight (48) hours after the
6 actual discharge.

7 F. If the consumer was committed after the dismissal of criminal
8 charges pursuant to the provisions of Section 1175.6a of Title 22 of
9 the Oklahoma Statutes:

10 1. The Department shall continue all appropriate efforts to
11 restore the consumer to competency as defined by Section 1175.1 of
12 Title 22 of the Oklahoma Statutes during the consumer's commitment;

13 2. The Department shall evaluate the consumer for competency and
14 issue a written report detailing the consumer's progress in regaining
15 competency to the attorney of the consumer, the district court that
16 dismissed the criminal action, and the district attorney or other
17 prosecuting agency that prosecuted the dismissed criminal action at
18 least once every year;

19 3. The Department shall notify the consumer, the attorney of the
20 consumer, the prosecuting agency that prosecuted the dismissed
21 criminal action, and the district court that committed the consumer
22 no less than sixty (60) days prior to any discharge, leave, granting
23 of visiting status, or transfer of the consumer. Contemporaneously
24 with the notice, the Department shall provide a written report

1 evaluating the consumer's risk to self and others if released, the
2 consumer's status and progress in regaining competency, the
3 consumer's current and historical compliance with medication and
4 treatment, and any discharge plan developed for the consumer;

5 4. The prosecuting agency that prosecuted the dismissed criminal
6 action may file with the district court that committed the consumer
7 an objection to the consumer's discharge, leave, granting of visiting
8 status, or transfer within thirty (30) days of receipt of notice
9 pursuant to paragraph 3 of this subsection. The prosecuting agency
10 shall, regardless of whether an objection is filed, make reasonable
11 efforts to notify all alleged victims in the dismissed criminal
12 action, or if an alleged victim is deceased, his or her family, of
13 the Department's planned discharge, leave, granting of visiting
14 status, or transfer of the consumer;

15 5. The court shall hold a hearing within thirty (30) days of the
16 filing of an objection by the prosecuting agency to determine whether
17 the consumer's planned discharge, leave, granting of visiting status,
18 or transfer should occur. The consumer shall be entitled to counsel
19 at the hearing and in preparation for the hearing. If the consumer
20 does not have counsel, the court shall appoint an attorney to
21 represent the person at no cost if the person is indigent and cannot
22 afford an attorney. The hearing may be continued either by agreement
23 of the parties or upon good cause shown. The prosecuting agency
24 objecting to the consumer's discharge, leave, granting of visiting

1 status, or transfer shall bear the burden of proof, by clear and
2 convincing evidence, that the planned discharge, leave, granting of
3 visiting status, or transfer should not be granted. In the event of
4 a planned discharge pursuant to subsection B of this section, the
5 court shall determine whether the criteria contained within
6 subsection B of this section has been met. In the event of a
7 convalescent leave, granting of visiting status, or transfer pursuant
8 to subsection C or D of this section, the court shall determine
9 whether the applicable criteria have been met and whether the leave,
10 granting of visiting status, or transfer is in the best interest of
11 the consumer and in the best interest of public safety. The court
12 shall enter the appropriate order which shall include written
13 findings of fact and conclusions of law and specify its effective
14 date;

15 6. An order entered pursuant to this subsection may be appealed
16 by either the consumer or the prosecuting agency to the Supreme Court
17 in accordance with the rules of the Supreme Court. The district
18 court, the Supreme Court, or the Court of Civil Appeals, if assigned,
19 may stay an order granting discharge, leave, visiting status, or
20 transfer pending appeal. On appeal, the district court's findings of
21 facts shall be reviewed for an abuse of discretion while the legal
22 conclusions of the district court shall be reviewed de novo. If the
23 prosecuting agency appeals an order granting the consumer's
24 discharge, leave, visiting status, or transfer and the order has been

1 stayed pending appeal, the appellate court shall resolve the appeal
2 in an expedited manner; and

3 7. The provisions of this subsection shall apply to all persons
4 subject to such terms regardless of whether the person's criminal
5 charge or commitment occurred before or after the effective date of
6 this act.

7 G. The expense of returning a consumer from convalescent leave,
8 outpatient status or visiting status shall be that of:

9 1. The party removing the consumer from the facility; or

10 2. The Department. When it becomes necessary for the consumer
11 to be returned from the county where the consumer happens to be, the
12 Department shall reimburse the county pursuant to the provisions of
13 the State Travel Reimbursement Act.

14 ~~G.~~ H. In the event authorization is necessary to accomplish the
15 return of the consumer to the facility, such authority is hereby
16 vested in the judge of the district court in the county where the
17 consumer is located. Upon receipt of notice that the consumer needs
18 to be returned to the facility, the judge shall cause the consumer to
19 be brought before the court by issuance of a citation directed to the
20 consumer to appear and show cause why the consumer should not be
21 returned to the facility. The judge shall, if clear and convincing
22 evidence is presented by testimony under oath that the consumer
23 should be returned to the facility, enter an order returning the
24 consumer. If there is a lack of clear and convincing evidence

1 showing the necessity of such return, the consumer shall immediately
2 be released. Law enforcement officers are authorized to take into
3 custody, detain and transport a consumer pursuant to a citation or an
4 order of the judge of the district court.

5 ~~H.~~ I. An attending physician of any consumer admitted to a
6 private facility may discharge a consumer or permit the consumer to
7 leave the facility subject to the same provisions applicable to the
8 discharge or release of a consumer by the person in charge of a state
9 facility.

10 SECTION 5. This act shall become effective November 1, 2025.

11 Passed the Senate the 12th day of March, 2025.

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13

Presiding Officer of the Senate

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15 Passed the House of Representatives the ____ day of _____,
16 2025.

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Presiding Officer of the House
of Representatives

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