

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 COMMITTEE SUBSTITUTE
FOR
4 SENATE BILL 1089

By: Rosino of the Senate

5 and

6 Lawson of the House

7

8

9 COMMITTEE SUBSTITUTE

10 An Act relating to determination of competency;
11 amending 22 O.S. 2021, Sections 1175.1, as amended by
12 Section 1, Chapter 73, O.S.L. 2024, and 1175.6a (22
13 O.S. Supp. 2024, Section 1175.1), which relate to
14 definitions and persons capable of achieving
15 competence; modifying definition; directing court to
16 conduct competency proceedings for certain persons;
17 establishing procedures for court to conduct
18 competency proceedings for certain persons; requiring
19 criminal proceedings to resume upon certain
20 determination; requiring additional competency
21 restoration services upon certain determination;
22 requiring commencement of civil commitment
23 proceedings upon certain determination; tolling
24 statute of limitations under certain circumstances;
amending 43A O.S. 2021, Sections 1-103, as last
amended by Section 1, Chapter 96, O.S.L. 2024, and 7-
101 (43A O.S. Supp. 2024, Section 1-103), which
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

1 order; authorizing stay of certain order;
2 establishing standards for certain review; clarifying
3 applicability of provisions; updating statutory
4 references; updating statutory language; and
5 providing an effective date.

6
7 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

24 4. "Incompetent" or "incompetency" means the present inability
25 of a person arrested for or charged with a crime to understand the

1 nature of the charges and proceedings brought against him or her and
2 to effectively and rationally assist in his or her defense;

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

6 6. "Qualified forensic examiner" means any:

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

18 7. "Reasonable period of time" means a period not to exceed the
19 lesser of:

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

23 Any time period where the defendant refuses medication
24 prescribed or ordered that is designed to restore the defendant to

1 competency shall not be used in the calculation of a reasonable
2 period of time.

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

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

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

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

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

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

17 2. If the person is found to continue to be incompetent because
18 the person is a person requiring treatment as defined in Section 1-
19 103 of Title 43A of the Oklahoma Statutes, the person shall be
20 returned to the custody of the Department of Mental Health and
21 Substance Abuse Services or designee;

22 3. If the person is found to be incompetent because the person
23 is ~~intellectually disabled~~ an individual with intellectual
24 disability as defined by Section 1408 of Title 10 of the Oklahoma

1 Statutes, the court shall issue the appropriate order as set forth
2 in Section 1175.6b of this title;

3 4. If the person is found to be incompetent for reasons other
4 than the person is a person requiring treatment as defined by
5 Section 1-103 of Title 43A of the Oklahoma Statutes, and other than
6 the person is intellectually disabled an individual with

7 intellectual disability as defined in Section 1408 of Title 10 of
8 the Oklahoma Statutes, and is also found to be not dangerous as
9 defined by Section 1175.1 of this title, the court shall issue the
10 appropriate order as set forth in Section 1175.6b of this title; or

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

19 D. If the person is found to be incompetent because the person
20 is a person requiring treatment as defined by Section 1-103 of Title
21 43A of the Oklahoma Statutes, but not capable of achieving
22 competence with treatment within a reasonable period of time as
23 defined by Section 1175.1 of this title, the court shall commence
24 civil commitment proceedings pursuant to Title 43A of the Oklahoma

1 Statutes and shall dismiss without prejudice the criminal
2 proceeding. If the person is subsequently committed to the
3 Department of Mental Health and Substance Abuse Services pursuant to
4 Title 43A of the Oklahoma Statutes, the statute of limitations for
5 the criminal charges which were dismissed by the court shall be
6 tolled until the person is discharged from the Department of Mental
7 Health and Substance Abuse Services pursuant to Section 7-101 of
8 Title 43A of the Oklahoma Statutes.

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

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

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

1 3. If the court determines that the person has not been
2 restored to competency, the court shall determine whether additional
3 competency restoration services are likely to be beneficial in
4 restoring the person to competency. If the court finds by a
5 preponderance of the evidence that additional competency restoration
6 services are:

- 7 a. likely to be beneficial in restoring the person to
8 competency, the court shall order the person to remain
9 in or be transferred to the custody of the Department
10 which shall continue to provide treatment, therapy, or
11 training calculated to restore the person to
12 competency for a period of time not to exceed the
13 lesser of an additional two (2) years or the maximum
14 sentence specified for the most serious offense with
15 which the defendant is charged, or
- 16 b. not likely to be beneficial in restoring the person to
17 competency, the court shall commence civil commitment
18 proceedings pursuant to Title 43A of the Oklahoma
19 Statutes and shall dismiss without prejudice the
20 criminal proceeding. If the person is subsequently
21 committed to the Department pursuant to Title 43A of
22 the Oklahoma Statutes, the statute of limitations for
23 the criminal charges which were dismissed by the court
24 shall be tolled until the person is discharged from

the Department pursuant to Section 7-101 of Title 43A
of the Oklahoma Statutes.

SECTION 3. AMENDATORY 43A O.S. 2021, Section 1-103, as

4 last amended by Section 1, Chapter 96, O.S.L. 2024 (43A O.S. Supp.
5 2024, Section 1-103), is amended to read as follows:

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

9 1. "Department" means the Department of Mental Health and
10 Substance Abuse Services;

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

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

17 4. "Board" means the Board of Mental Health and Substance Abuse
18 Services as established by the Mental Health Law:

19 5. "Commissioner" means the Commissioner of Mental Health and
20 Substance Abuse Services:

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

1 7. "Facility" means any hospital, school, building, house or
2 retreat, authorized by law to have the care, treatment or custody of
3 an individual with mental illness, drug or alcohol dependency,
4 gambling addiction, or an eating disorder including, but not limited
5 to, public or private hospitals, community mental health centers,
6 clinics, satellites, and community-based structured crisis centers;
7 provided, that facility shall not mean a child guidance center
8 operated by the State Department of Health;

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

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

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

22 | 11. "Licensed mental health professional" means:

- b. a psychiatrist who is a diplomate of the American Osteopathic Board of Neurology and Psychiatry,
 - c. a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,
 - d. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
 - e. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
 - f. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,
 - g. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
 - h. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,
 - i. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,
 - j. a physician's assistant who is licensed in good standing in this state, or

k. a licensed alcohol and drug counselor/mental health (LADC/MH) as defined in the Licensed Alcohol and Drug Counselors Act;

12. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

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

- (1) poses a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other significant self-inflicted bodily harm,
 - (2) poses a substantial risk of immediate physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons,
 - (3) has placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious and immediate threats,

(4) is in a condition of severe deterioration that is continuing, as has been observed within the previous ~~seventy-two~~ (72) hour seventy-two-hour period such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or

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

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

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

- 1 (1) the person's history of violence or criminal acts
2 including unadjudicated criminal acts if evidence
3 of the person's culpability is evident or
4 established,
5 (2) the person's history of compliance with mental
6 and behavioral health medication and treatment,
7 (3) the probability and result of the person's
8 noncompliance with medication and treatment if
9 not committed,
10 (4) the consumer's history of using weapons in an
11 illegal or unsafe manner, and
12 (5) any previous instances of harm, attempted harm,
13 or threatened harm to self or others.

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

- 18 (1) a person whose mental processes have been
19 weakened or impaired by reason of advanced years,
20 dementia, or Alzheimer's disease,
21 (2) a person who is an individual with intellectual
22 disability or developmental disability as defined
23 in Section 1408 of Title 10 of the Oklahoma
24 Statutes,

- (3) a person with seizure disorder,
 - (4) a person with a traumatic brain injury, or
 - (5) a person who is homeless.

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

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

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

time pursuant to paragraph 3 of subsection A of Section 5-208 of this title;

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

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

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

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

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

b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related

to each of these goals and which include specific prognosis for achieving each of these goals,

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

18. "Telemedicine" means technology-enabled health and care

management and delivery systems that extend capacity and access,

which includes:

- a. synchronous mechanisms, which may include live audiovisual interaction between a patient and a health care professional or real-time provider to provider

1 consultation through live interactive audiovisual
2 means,

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

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

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

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

treatment plan for treatment of mental illness in
a secure juvenile facility or placement in a

(2) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last twenty-four (24) months,

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

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

g. is likely to benefit from assisted outpatient treatment;

21. "Assisted outpatient treatment" means outpatient services

which have been ordered by the court pursuant to a treatment plan approved by the court to treat an assisted outpatient's mental illness and to assist the person in living and functioning in the community, or to attempt to prevent a relapse or deterioration th

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.

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12 60-1-1689 TEK 3/4/2025 5:31:55 PM

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