

1 1. "Competent" and "competency" refer to a child's ability to
2 understand the nature and objectives of a proceeding against the
3 child or to assist in the child's defense. A child is incompetent
4 if, due to developmental disability, developmental immaturity,
5 intellectual disability, or mental illness, the child is presently
6 incapable of understanding the nature and objective of proceedings
7 against the child or of assisting in the child's defense;

8 2. "Credentialed forensic evaluator" means a licensed
9 psychologist, psychiatrist or other physician with necessary
10 education, training, and experience to perform juvenile competency
11 evaluations, and who has been approved to render such opinions for
12 the court;

13 3. "Developmental disability" means a severe and chronic
14 disability that is attributable to a mental or physical impairment.
15 Such disabilities include, but are not limited to, cerebral palsy,
16 epilepsy, autism, or other neurological conditions that lead to
17 impairment of general intellectual functioning or adaptive behavior;

18 4. "Developmental immaturity" means a condition based on a
19 juvenile's chronological age and significant lack of developmental
20 skills when the juvenile has no significant mental illness or
21 intellectual disability;

22 5. "Intellectual disability" means a disability characterized
23 by significant limitations both in intellectual functioning and in
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1 adaptive behavior as expressed in conceptual, social and practical
2 adaptive skills;

3 6. "Mental illness" has the same meaning as in paragraph 11 of
4 Section 5-502 of Title 43A of the Oklahoma Statutes;

5 7. "Proceeding" means any delinquency or youthful offender
6 proceeding under the Oklahoma Juvenile Code.

7 SECTION 2. AMENDATORY Section 2, Chapter 398, O.S.L.
8 2015 (10A O.S. Supp. 2019, Section 2-2-401.2), is amended to read as
9 follows:

10 Section 2-2-401.2 A. 1. At any time prior to or during
11 delinquency or youthful offender proceedings pursuant to the
12 Oklahoma Juvenile Code, the child's attorney, the district attorney,
13 or the court may raise the issue of a child's competency to
14 participate in the proceeding. If at the time the issue of
15 competency is raised the child is not represented by counsel, the
16 court shall immediately appoint counsel. The court shall stay all
17 proceedings except to allow the filing of a delinquency petition or
18 youthful offender information.

19 2. At any time prior to or during delinquency or youthful
20 offender proceedings pursuant to the Oklahoma Juvenile Code, the
21 Office of Juvenile Affairs may raise the issue of a child's
22 competency for any child in its custody.

23 3. In any delinquency or youthful offender proceeding pursuant
24 to the Juvenile Code, if the child who is the subject of the

1 proceeding is thirteen (13) years or older and if the child is not
2 otherwise found to be developmentally disabled, developmentally
3 immature, intellectually disabled, or mentally ill, there exists a
4 rebuttable presumption that the child is competent. Such
5 presumption applies only for making a determination as to whether
6 the child is competent and shall not be used or applicable for any
7 other purpose.

8 B. The court may find a child incompetent without ordering a
9 competency evaluation or hearing if the district attorney and the
10 child's attorney, and at least one of the child's parents, legal
11 guardians, or guardian ad litem agree to the determination.

12 SECTION 3. AMENDATORY Section 3, Chapter 398, O.S.L.
13 2015 (10A O.S. Supp. 2019, Section 2-2-401.3), is amended to read as
14 follows:

15 Section 2-2-401.3 A. When the district attorney ~~or~~, the
16 child's attorney, or the Office of Juvenile Affairs on behalf of a
17 child in its custody has reasonable basis to believe that a child is
18 incompetent to proceed in the delinquency ~~action~~ or youthful
19 offender proceeding, the party shall file a motion for determination
20 of competency. The motion shall state that the child is incompetent
21 to proceed and shall state facts sufficient to set forth the
22 reasonable basis to conduct a competency evaluation. If the court
23 raises the issue sua sponte, the court by written order shall set
24 forth the reasonable basis that the child is incompetent to proceed.

1 B. Within five (5) judicial days after the motion is made, the
2 court shall make one of the following determinations:

3 1. That the child is incompetent pursuant to subsection B of
4 Section ~~2~~ 2-2-401.2 of this ~~act~~ title; or

5 2. Without conducting a hearing, that there exists a reasonable
6 basis to conduct a competency evaluation; or

7 3. To schedule a hearing to determine whether there exists a
8 reasonable basis to conduct a competency evaluation. Such hearing
9 shall be held within ten (10) judicial days. The court's
10 determination shall be announced no later than one (1) judicial day
11 after the conclusion of the hearing.

12 C. If the court determines there is a reasonable basis for a
13 competency evaluation or if the district attorney and the child's
14 attorney agree to the evaluation, the court shall order a competency
15 evaluation. If the court orders a competency evaluation, the court
16 shall order that the competency evaluation be conducted in the
17 least-restrictive environment, taking into account the public safety
18 and the best interests of the child.

19 1. The court shall provide in its order that the evaluator
20 shall have access to all relevant confidential and public records
21 related to the child, including competency evaluations and reports
22 conducted in prior delinquent or youthful offender proceedings. The
23 court shall provide to the evaluator a copy of the delinquency
24 petition or youthful offender information and the names and contact

1 information for the judge, district attorney, child's attorney, and
2 parents or legal guardians.

3 2. Within five (5) judicial days after the court orders an
4 evaluation, the district attorney shall deliver to the evaluator
5 copies of relevant police reports and other background information
6 relevant to the child that are in the district attorney's
7 possession.

8 3. Within five (5) judicial days after the court orders an
9 evaluation, the child's attorney shall deliver to the evaluator
10 copies of relevant police reports and other relevant records
11 including, but not limited to, educational, medical, psychological,
12 and neurological records that are relevant to the evaluation and
13 that are in the attorney's possession.

14 SECTION 4. AMENDATORY Section 7, Chapter 398, O.S.L.
15 2015 (10A O.S. Supp. 2019, Section 2-2-401.7), is amended to read as
16 follows:

17 Section 2-2-401.7 A. After a hearing pursuant to Section ~~6~~ 2-
18 2-401.6 of this ~~act~~ title, if the court determines by a
19 preponderance of the evidence that the child is competent to
20 proceed, the delinquency or youthful offender proceedings shall be
21 resumed as provided by law.

22 B. After a hearing pursuant to Section ~~6~~ 2-2-401.6 of this ~~act~~
23 title, if the court determines by the preponderance of the evidence
24 that the child is incompetent to proceed and cannot attain

1 competency within the period of time application under subparagraph
2 a of paragraph 3 of subsection C of this section, the court shall
3 dismiss the petition or information without prejudice, and take
4 either of the following actions:

5 1. Refer the matter to the Oklahoma Department of Human
6 Services and request a determination whether a deprived action
7 should be filed in accordance with the Oklahoma Children's Code
8 alleging that the child is a neglected, abused or dependent child;
9 or

10 2. Refer the matter to the district attorney for consideration
11 of initiating a Child in Need of Supervision or Minor in Need of
12 Mental Health and Substance Abuse Treatment proceeding in accordance
13 with the Oklahoma Juvenile Code or Inpatient Mental Health and
14 Substance Abuse Treatment of Minors Act.

15 C. If the court determines by a preponderance of the evidence
16 that a child is incompetent to proceed but may likely attain
17 competency, the court shall stay the proceedings and order the child
18 to receive services designated to assist the child in attaining
19 competency, based upon the recommendations in the competency
20 evaluation report unless the court makes specific findings that the
21 recommended services are not justified. The court shall order the
22 child's parent or legal guardian to contact a court-designated
23 provider by a specified date to arrange for services.

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1 1. The competency attainment services provided to a child shall
2 be based on a court-approved competency attainment plan described in
3 paragraph 2 of subsection D of this section, and are subject to the
4 conditions and time periods required pursuant to this section
5 measured from the date the court approves the plan.

6 2. The court shall order that the competency attainment
7 services ordered are provided in the least-restrictive environment,
8 taking into account the public safety and the best interests of the
9 child. If the child has been released on temporary orders and
10 refuses or fails to cooperate with the service provider, the court
11 may modify the orders to require a more appropriate setting.

12 3. No child shall be required to participate in competency
13 attainment services for longer than is required to attain
14 competency. The following maximum periods of participation shall
15 apply:

- 16 a. if the services are provided, the child shall not
17 participate in those services for a period exceeding
18 six (6) months or upon the child's 18th birthday, or
19 up to the child's 19th birthday if ordered by the
20 court in order to complete the six (6) months of
21 treatment, if the child is charged with an act that
22 would be a misdemeanor if committed by an adult,
- 23 b. if the services are provided, the child shall not
24 participate for a period exceeding twelve (12) months

1 or upon the child's 18th birthday, or up to the
2 child's 19th birthday if ordered by the court in order
3 to complete the twelve (12) months of treatment, if
4 the child is charged as a delinquent or youthful
5 offender for an act that would be a felony if
6 committed by an adult.

7 D. 1. Within ten (10) judicial days after the court orders the
8 provider responsible for the child's competency attainment services,
9 the court shall deliver to that provider:

- 10 a. the name and address of the child's counsel,
- 11 b. a copy of the child's Petition or Information,
- 12 c. a copy of the competency evaluation report,
- 13 d. the name, address, and phone number of the child's
14 parents or legal guardian,
- 15 e. the name of the Office of Juvenile Affairs employee or
16 Juvenile Bureau employee responsible for the intake,
17 supervision, or custody of the child, if adjudicated,
- 18 f. the name of the Department of Human Services
19 caseworker, if any, and
- 20 g. any other relevant documents or reports concerning the
21 child's health that have come to the attention of the
22 court.

23 2. Not later than ten (10) judicial days after the child
24 contacts the competency attainment provider, a plan for the child to

1 attain competency shall be submitted to the court by the provider.
2 The court shall provide copies of the plan to the district attorney,
3 the child's attorney, the guardian ad litem, if any, the Office of
4 Juvenile Affairs or Juvenile Bureau, and the child's parent or legal
5 guardian.

6 E. The provider shall submit reports to the court pursuant to
7 the following schedule:

8 1. Every ninety (90) calendar days and upon completion or the
9 termination of services. Each report shall include the following:

- 10 a. the services provided to the child, including
11 medication, education and counseling,
- 12 b. the likelihood that the competency of the child to
13 proceed will be restored within the applicable period
14 of time set forth in subparagraph a of paragraph 3 of
15 subsection C of this section, and
- 16 c. the progress made towards the goals and objectives for
17 the restoration of competency identified in the
18 recommendations from the competency evaluation as
19 adopted by the court;

20 2. Three (3) judicial days after the provider's determination
21 that the child is not cooperating to a degree that would allow the
22 services to be effective to help the child attain competency;

23 3. Three (3) judicial days after the provider's determination
24 that the current setting is no longer the least_restrictive setting

1 that is consistent with the child's ability to attain competency and
2 taking into account the public safety and the best interests of the
3 child. The provider shall include in the report an assessment of
4 the danger the child poses to himself, herself or others and an
5 assessment of the appropriateness of the placement;

6 4. Three (3) judicial days after the provider's determination
7 that the child has achieved the goals of the plan and would be able
8 to understand the nature and objectives of the proceedings against
9 the child, to assist in the child's defense, and to understand and
10 appreciate the consequences that may be imposed or result from the
11 proceedings with or without reasonable accommodations. The report
12 shall include recommendations for the accommodations that would be
13 necessary or advantageous; and

14 5. Three (3) judicial days after the provider's determination
15 that the child will not achieve the goals of the plan within the
16 applicable period of time pursuant to subparagraph a of paragraph 3
17 of subsection C of this section. The report shall include
18 recommendations for services for the child and taking into account
19 the public safety and the best interests of the child.

20 F. The court shall provide copies of any report made by the
21 provider to the district attorney, the child's attorney, the child's
22 intake worker, and the child's guardian ad litem, if any. The Court
23 shall provide copies of any reports made by the provider to the
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1 child's parents or legal guardians, unless the court finds that
2 doing so is not in the best interest of the child.

3 G. Within fifteen (15) judicial days after receiving a
4 provider's report, the court may hold a hearing to determine if a
5 new order is necessary.

6 1. If the court determines that the child is not making
7 progress toward competency or is so uncooperative that attainment
8 services cannot be effective, the court may order a change in
9 setting or services that would help the child attain competency
10 within the relevant period of time as set forth in subparagraph a of
11 paragraph 3 of subsection C of this section.

12 2. If the court determines that the child has not or will not
13 attain competency within the relevant period of time as set forth in
14 subparagraph a of paragraph 3 of subsection C of this section, the
15 court shall dismiss the delinquency or youthful offender charge
16 without prejudice.

17 3. A dismissal under paragraph 2 of this subsection shall not
18 preclude a future delinquent child or youthful offender proceeding
19 as provided for under ~~Title 10A of the Oklahoma Statutes~~ this title.

20 H. After a hearing held pursuant to subsection G of this
21 section, if the court determines that the child has attained
22 competency, the court shall proceed with the ~~delinquent child's~~
23 delinquency or youthful offender proceeding in accordance with the
24 provisions of the Juvenile Code.

1 I. A dismissal under this section does not bar a civil action
2 based on the acts or omissions that formed the basis of the petition
3 or information.

4 SECTION 5. This act shall become effective November 1, 2020.

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6 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
7 SERVICES, dated 02/12/2020 - DO PASS, As Coauthored.
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