

1 ENGROSSED SENATE
2 BILL NO. 552

By: Haste of the Senate

and

Worthen of the House

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4
5
6 An Act relating to determination of competence;
7 amending 22 O.S. 2021, Sections 1175.1, 1175.6,
8 1175.6a, and 1175.8, which relate to procedures for
9 determinations of competency; modifying definitions;
10 modifying requirements for certain court order;
11 requiring notification of court order of commitment;
12 requiring certain report within specified time
13 period; establishing requirements for the provision
14 of certain treatment, therapy, or training; requiring
15 dismissal of criminal charges under certain
16 circumstances; tolling statute of limitations for
17 criminal charges under certain circumstances;
18 requiring return of certain persons to jail;
19 requiring submission of certain reports to the court;
20 requiring certain hearings; requiring transport of
21 defendant to certain jurisdiction; clarifying
22 requirements for administration of certain
23 medications; requiring criminal proceedings to be
24 resumed within certain time period upon determination
of competency; updating statutory language; and
declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2021, 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

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

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

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

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

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

17 ~~4. "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 5. "Public guardian" means the Office of Public Guardian as
22 established under the Oklahoma Public Guardianship Act in Section 6-
23 101 et seq. of Title 30 of the Oklahoma Statutes;

24 6. "Qualified forensic examiner" means any:

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

8 ~~6.~~ 7. "Reasonable period of time" means a period during which a
9 person is receiving treatment for the purpose of restoring
10 competency as required by law 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~~
13 ~~b.~~ a maximum period of two (2) years; ~~and~~

14 ~~7.~~ ~~"Public guardian" means the Office of Public Guardian as~~
15 ~~established under the Oklahoma Public Guardianship Act in Section 6-~~
16 ~~101 et seq. of Title 30 of the Oklahoma Statutes, or~~

- 17 b. the maximum length of the sentence if such sentence is
18 less than two (2) years.

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

21 Section 1175.6. Upon the finding by the jury or the court as
22 provided by Section 1175.5 of this title, the court shall issue the
23 appropriate order regarding the person as follows:
24

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

3 2. If the person is charged with a felony and found to be
4 incompetent because the person is a person requiring treatment as
5 defined in Title 43A of the Oklahoma Statutes, the court shall issue
6 the appropriate order as set forth in Section 1175.6a of this title;

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

11 4. 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, or for reasons
14 other than the person is intellectually disabled as defined in
15 Section 1408 of Title 10 of the Oklahoma Statutes, the court shall
16 issue the appropriate order as set forth in Section 1175.6c of this
17 title.

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

20 Section 1175.6a. A. 1. If ~~the~~ a person is found to be
21 incompetent prior to conviction because he or she is a person
22 requiring treatment as defined in Section 1-103 of Title 43A of the
23 Oklahoma Statutes, but capable of achieving competence with
24 treatment within a reasonable period of time as defined by Section

1 1175.1 of this title, the court shall suspend the criminal
2 proceedings and order the Department of Mental Health and Substance
3 Abuse Services to provide treatment, therapy or training which is
4 calculated to allow the person to achieve competency. The
5 ~~Department may designate a willing entity to provide such competency~~
6 ~~restoration services on behalf of the Department, provided the~~
7 ~~entity has qualified personnel. The court shall further order the~~
8 ~~Department to take custody of the individual as soon as a forensic~~
9 ~~bed becomes available, unless both the Department and the county~~
10 ~~jail where the person is being held determine that it is in the best~~
11 ~~interests of the person to remain in the county jail. Such~~
12 ~~competency restoration services shall begin within a reasonable~~
13 ~~period of time after the court has determined that the person is not~~
14 ~~competent to stand trial.~~

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

20 B. ~~The Department of Mental Health and Substance Abuse Services~~
21 ~~or designee shall make periodic reports to the court as to the~~
22 ~~competency of the defendant~~ The court shall notify the Department
23 within seventy-two (72) hours of filing an order of commitment by
24 providing a copy of the order to the Department.

1 2. Within thirty (30) days after the notification of the order
2 of commitment, the Department shall provide a report to the court on
3 any recommended treatment for the defendant to attain competency to
4 proceed. Such report shall include:

5 a. the mental illness causing the incompetence,

6 b. the availability of acceptable treatment and if such
7 treatment is available in the community,

8 c. the likelihood of the defendant's attaining competence
9 within a reasonable period of time as defined by
10 Section 1175.1 of this title, and

11 d. whether the person is a person requiring treatment as
12 defined by Section 1-103 of Title 43A of the Oklahoma
13 Statutes.

14 3. The treatment, therapy, or training for competency shall be
15 provided in the jail or detention facility where the person is being
16 held, unless the Department recommends and the court determines that
17 the person can be safely treated in an outpatient community-based
18 setting or the Department determines that the person should be
19 transported to a facility designated by the Department to provide
20 such treatment, therapy, or training. The Department may designate
21 or contract with a willing entity to provide the competency
22 restoration services in the jail or detention facility on behalf of
23 the Department. Competency restoration services shall begin within
24 a reasonable period of time after the court has determined that the

1 person is not competent to stand trial. The Department shall notify
2 the court, district attorney, and defense counsel that treatment has
3 begun and where such treatment is being provided within fourteen
4 (14) days from the date treatment begins. All transportation
5 pursuant to this section shall be conducted by the sheriff's
6 department of the county where the person is charged.

7 4. If a person charged with a misdemeanor is found to be
8 incompetent because he or she is a person requiring treatment as
9 defined in Section 1-103 of Title 43A of the Oklahoma Statutes, the
10 court shall commence civil commitment proceedings pursuant to Title
11 43A of the Oklahoma Statutes and shall dismiss the criminal
12 proceeding without prejudice. If the person is subsequently
13 committed to the Department for civil commitment, the statute of
14 limitations for the criminal charge or charges that were dismissed
15 by the court shall be tolled until the person is discharged from the
16 Department pursuant to Section 7-101 of Title 43A of the Oklahoma
17 Statutes.

18 5. If at any time while the person is being treated in an
19 inpatient facility operated by the Department, the Department
20 determines that he or she is no longer a person requiring treatment
21 as defined in Section 1-103 of Title 43A of the Oklahoma Statutes,
22 the person shall be immediately returned to the jail and the
23 Department shall file a report with the court. In the report, the
24 Department can either recommend a less restrictive treatment

1 alternative including but not limited to an outpatient community-
2 based setting or treatment in a community residential facility or
3 jail or detention-based setting, or take the actions set forth in
4 subsection B of this section. Within thirty (30) days of receipt of
5 the report, the court shall hold a hearing to determine whether
6 competency restoration services should be continued in the
7 outpatient setting or in the jail or detention-based setting.

8 B. If at any time the Department determines that the defendant
9 is unlikely to attain competency within a reasonable period of time
10 as defined by Section 1175.1 of this title, the Department shall
11 issue a report to the court. Within thirty (30) days of receipt of
12 the report, the court shall hold a hearing to determine whether
13 competency restoration treatment should continue.

14 C. If the person is determined by the Department of Mental
15 Health and Substance Abuse Services or designee to have regained
16 competency, or is no longer incompetent because the person is a
17 person requiring treatment as defined by Title 43A of the Oklahoma
18 Statutes, a competency hearing shall be scheduled within twenty (20)
19 days:

20 1. After the court receives notification that the defendant is
21 competent to proceed or no longer meets the criteria for continued
22 commitment, the defendant shall be transported to the jurisdiction
23 of the court that entered the order for commitment for the
24 competency hearing. If the defendant is receiving psychotropic

1 medication at a mental health facility at the time he or she is
2 discharged and transferred to the jail, the administration of the
3 medication shall continue unless the jail physician documents the
4 need to change or discontinue it. The physicians of the jail and
5 the Department shall collaborate to ensure that any change in
6 medication does not adversely affect the defendant's mental health
7 status or his or her ability to continue with court proceedings;
8 provided, however, the jail physician has final authority regarding
9 the administration of medication to an inmate in jail;

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

12 ~~2.~~ 3. If the person is found to continue to be incompetent
13 because the person is a person requiring treatment as defined in
14 Title 43A of the Oklahoma Statutes, the person shall be returned to
15 the custody of the Department of Mental Health and Substance Abuse
16 Services or designee for continued treatment, therapy, or training
17 for competency as provided in paragraph 3 of subsection A of this
18 section;

19 ~~3.~~ 4. If the person is found to be incompetent because the
20 person is intellectually disabled as defined by Title 10 of the
21 Oklahoma Statutes, the court shall issue the appropriate order as
22 set forth in Section 1175.6b of this title;

23 ~~4.~~ 5. If the person is found to be incompetent for reasons
24 other than the person is a person requiring treatment as defined by

1 Title 43A of the Oklahoma Statutes, and other than the person is
2 intellectually disabled as defined in Title 10 of the Oklahoma
3 Statutes, and is also found to be not dangerous as defined by
4 Section 1175.1 of this title, the court shall issue the appropriate
5 order as set forth in Section 1175.6b of this title; or

6 ~~5.~~ 6. If the person is found to be incompetent for reasons
7 other than the person is a person requiring treatment as defined by
8 Title 43A of the Oklahoma Statutes, and other than the person is
9 intellectually disabled as defined in Title 10 of the Oklahoma
10 Statutes, but is also found to be dangerous as defined by Section
11 1175.1 of this title, the court shall issue the appropriate order as
12 set forth in Section 1175.6c of this title.

13 D. If the person is found to be incompetent because the person
14 is a person requiring treatment as defined by Section 1-103 of Title
15 43A of the Oklahoma Statutes, but not capable of achieving
16 competence with treatment within a reasonable period of time as
17 defined by Section 1175.1 of this title, the court shall commence
18 civil commitment proceedings pursuant to Title 43A and shall dismiss
19 without prejudice the criminal proceeding. If the person is
20 subsequently committed to the Department of Mental Health and
21 Substance Abuse Services pursuant to Title 43A, the statute of
22 limitations for the criminal charges which were dismissed by the
23 court shall be tolled until the person is discharged from the

24

1 Department of Mental Health and Substance Abuse Services pursuant to
2 Section 7-101 of Title 43A of the Oklahoma Statutes.

3 SECTION 4. AMENDATORY 22 O.S. 2021, Section 1175.8, is
4 amended to read as follows:

5 Section 1175.8. If the medical supervisor reports that the
6 person appears to have achieved competency after a finding of
7 incompetency, the court shall hold another competency hearing to
8 determine if the person has achieved competency. If competency has
9 been achieved, the criminal proceedings shall be immediately resumed
10 by setting a competency hearing within twenty (20) business days.

11 SECTION 5. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 Passed the Senate the 20th day of March, 2023.

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Presiding Officer of the Senate

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19 Passed the House of Representatives the ____ day of _____,
20 2023.

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Presiding Officer of the House
of Representatives

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