

# An Act

ENROLLED SENATE  
BILL NO. 771

By: Gollihare of the Senate

and

Lawson of the House

An Act relating to determination of competence; amending 22 O.S. 2021, Sections 1175.1, 1175.3, 1175.4, and 1175.6b, which relate to definitions and procedures for determining competency; modifying definitions; providing for standing for Office of Public Guardian to participate in certain proceedings; requiring court to consider certain recommendations; updating statutory reference; and providing an effective date.

SUBJECT: Determination of competence

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 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;

~~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. "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;~~

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

6. "Qualified forensic examiner" means any:

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

~~6.~~ 7. "Reasonable period of time" means a period not to exceed the lesser of:

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

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

SECTION 2. AMENDATORY 22 O.S. 2021, Section 1175.3, is amended to read as follows:

Section 1175.3. A. Upon filing of an application for determination of competency, the court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by Section 1175.2 of this title.

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

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

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

b. In addition, the Developmental Disabilities Services Division and the Office of Public Guardian of the Department of Human Services shall receive written notice from the district attorney who filed the criminal petition, and be authorized by order of the

court to have a psychologist or other appropriate clinician participate with professionals assigned by any other public or private agency in any competency evaluation ~~wherein~~ where developmental or intellectual disability may be involved. The psychologist or clinician employed, by contract or otherwise, by the Department of Human Services may issue a separate opinion and recommendation to the court. In such cases where intellectual disability may be involved, the Office of Public Guardian shall have standing to participate in any stage of the proceedings as deemed necessary by the Office.

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

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

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

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

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

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

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

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

6. If the ~~answers to questions~~ requirements of paragraphs 4 and 5 of this subsection are ~~no~~ not established, ~~why~~ the reasoning for which the defendant is otherwise incompetent; and

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

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

SECTION 3. AMENDATORY 22 O.S. 2021, Section 1175.4, is amended to read as follows:

Section 1175.4. A. A hearing to determine the competency of the person whose competency is in question shall be held within thirty (30) days after the qualified forensic ~~examiner(s)~~ examiner or examiners have made the determination required in Section 1175.3

of this title. In such cases where intellectual disability may be involved, the Office of Public Guardian shall have standing to participate in any stage of the proceedings as deemed necessary by the Office.

B. The court, at the hearing, shall determine by a preponderance of the evidence if the person is incompetent. Such determination shall include consideration of all reports prepared by the qualified forensic ~~examiner(s)~~ examiner or examiners; provided, however, in any case where intellectual disability may be involved, the recommendations of examiners set forth in subparagraph b of paragraph 1 of subsection D of Section 1175.3 of this title shall be considered by the court. The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house the person may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the court shall proceed to the selection of such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the court based on clear and convincing evidence that alternatives to exclusion were attempted before the

court renders the person's removal for that purpose or the person's appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. If so stipulated by counsel for a person whose competency is in question, the district attorney and the court, testimony may be given by telephone or other electronic transmitting device approved by the court. No statement, admission or confession made by the person whose competency is in question obtained during the examination for competency may be used for any purpose except for proceedings under ~~this act~~ Section 1175.1 et seq. of this title. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form.

E. If the question of competency is submitted to a jury, the court shall instruct the jury as to the law regarding competency, and the findings they are to make. If the trial of the question is to the court, the court shall make the required findings.

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

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

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

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

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

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

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

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

B. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes and is found to be not dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and either refer the person to the Department of Human Services for consideration of voluntary assistance or conditionally release the person as set forth in this section.

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

- a. to be eligible for conditional release, the person shall agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the person's treatment providers, the appropriate district attorneys, law enforcement and court personnel. To effect this agreement, the person shall execute any releases required by law to allow for the dissemination of this information,
- b. the court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause,
- c. the district attorney, as well as any agency or individual involved in providing services with regard to the person's conditional release, may prepare and file an affidavit under oath if the district attorney, agency, or individual believes that the person has failed to comply with the conditions of release. The court shall then conduct a hearing to determine if the person has violated the conditions of release. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the Department of Human Services, the person, trial counsel for the person, and the client advocate general of the Department of Human Services. After reviewing the evidence concerning any alleged violation of the conditions of the release, the person's progress, treatment alternatives, and the need for public safety, the court may order no change to the conditions for the person's release or modify the conditions of release, and
- d. the person placed on conditional release shall remain in a conditional release status until the reviewing court issues a full release from all conditions.

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

- a. if found competent by the court or a jury after such rehearing, criminal proceedings shall be resumed,
- b. if the person is found to continue to be incompetent, the person shall be returned to either conditional release or referred to the Department of Human Services for consideration of voluntary assistance.

C. The Office of Public Guardian shall have standing to participate in any proceeding held pursuant to this section as deemed necessary by the Office.

SECTION 5. This act shall become effective November 1, 2024.

Passed the Senate the 5th day of March, 2024.

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Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2024.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_