

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB552 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Rande Worthen

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 552

By: Haste of the Senate

and

6 Worthen of the House

7
8
9
10 FLOOR SUBSTITUTE

11 An Act relating to determination of competence;
12 amending 22 O.S. 2021, Sections 1175.1, 1175.6a, and
13 1175.8, which relate to procedures for determinations
14 of competency; modifying and adding definitions;
15 requiring notification of court order of commitment;
16 requiring certain report within specified time
17 period; establishing requirements for the provision
18 of certain treatment, therapy, or training; requiring
19 return of certain persons to jail; requiring
20 submission of certain reports to the court; requiring
21 certain hearings; requiring transport of defendant to
22 certain jurisdiction; clarifying requirements for
23 administration of certain medications; requiring
24 criminal proceedings to be resumed within certain
time period upon determination of competency;
updating statutory language; authorizing Legislative
Office of Fiscal Transparency to conduct review;
requiring report; providing for effect of conclusions
on enacted provisions; providing for codification;
and declaring an emergency.

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

1 SECTION 1. AMENDATORY 22 O.S. 2021, Section 1175.1, is
2 amended to read as follows:

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

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

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

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

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

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

23 ~~4. "Criminal proceeding" means every stage of a criminal~~
24 ~~prosecution after arrest and before judgment, including, but not~~

1 ~~limited to, interrogation, lineup, preliminary hearing, motion~~
2 ~~dockets, discovery, pretrial hearings and trial;~~

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; and

14 ~~6.~~ 7. "Reasonable period of time" means a period during which a
15 person is receiving treatment for the purpose of restoring
16 competency as required by law not to exceed the lesser of:

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

20 ~~7.~~ ~~"Public guardian" means the Office of Public Guardian as~~
21 ~~established under the Oklahoma Public Guardianship Act in Section 6-~~
22 ~~101 et seq. of Title 30 of the Oklahoma Statutes, or~~

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

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

3 Section 1175.6a A. 1. If ~~the~~ a person is found to be
4 incompetent prior to conviction because he or she is a person
5 requiring treatment as defined in Section 1-103 of Title 43A of the
6 Oklahoma Statutes, but capable of achieving competence with
7 treatment within a reasonable period of time as defined by Section
8 1175.1 of this title, the court shall suspend the criminal
9 proceedings and order the Department of Mental Health and Substance
10 Abuse Services to provide treatment, therapy or training which is
11 calculated to allow the person to achieve competency. ~~The~~
12 ~~Department may designate a willing entity to provide such competency~~
13 ~~restoration services on behalf of the Department, provided the~~
14 ~~entity has qualified personnel. The court shall further order the~~
15 ~~Department to take custody of the individual as soon as a forensic~~
16 ~~bed becomes available, unless both the Department and the county~~
17 ~~jail where the person is being held determine that it is in the best~~
18 ~~interests of the person to remain in the county jail. Such~~
19 ~~competency restoration services shall begin within a reasonable~~
20 ~~period of time after the court has determined that the person is not~~
21 ~~competent to 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~~ The court shall notify the Department
6 within seventy-two (72) hours of filing an order of commitment by
7 providing a copy of the order to the Department.

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

- 12 a. the mental illness causing the incompetence,
13 b. the availability of acceptable treatment and if such
14 treatment is available in the community,
15 c. the likelihood of the defendant's attaining competence
16 within a reasonable period of time as defined by
17 Section 1175.1 of this title, and
18 d. whether the person is a person requiring treatment as
19 defined by Section 1-103 of Title 43A of the Oklahoma
20 Statutes.

21 3. The treatment, therapy, or training for competency shall be
22 provided in the jail or detention facility where the person is being
23 held, unless the Department recommends and the court determines that
24 the person can be safely treated in an outpatient community-based

1 setting or the Department determines that the person should be
2 transported to a facility designated by the Department to provide
3 such treatment, therapy, or training. The Department may designate
4 or contract with a willing entity to provide the competency
5 restoration services in the jail or detention facility on behalf of
6 the Department. Competency restoration services shall begin within
7 a reasonable period of time after the court has determined that the
8 person is not competent to stand trial. The Department shall notify
9 the court, district attorney, and defense counsel that treatment has
10 begun and where such treatment is being provided within fourteen
11 (14) days from the date treatment begins. The Department shall
12 assume liability for any services provided by the Department, or a
13 contracted or designated entity on behalf of the Department, for
14 individuals receiving competency treatment, therapy or training while
15 being held in a jail, public trust or detention facility.

16 4. If at any time while the person is being treated in an
17 inpatient facility operated by the Department, the court determines
18 that he or she is no longer a person requiring treatment as defined
19 in Section 1-103 of Title 43A of the Oklahoma Statutes, the court
20 may order the immediate return of the person to jail and the
21 Department shall file a report with the court. In the report, the
22 Department can either recommend a less restrictive treatment
23 alternative including but not limited to an outpatient community-
24 based setting or treatment in a community residential facility or

1 jail or detention-based setting, or take the actions set forth in
2 subsection B of this section. Within thirty (30) days of the return
3 of the person to jail, the court shall hold a hearing to determine
4 whether competency restoration services should be continued in the
5 outpatient setting or in the jail or detention-based setting.

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

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

18 1. After the court receives notification that the defendant is
19 competent to proceed or no longer meets the criteria for continued
20 commitment, the defendant shall be transported to the jurisdiction
21 of the court that entered the order for commitment for the
22 competency hearing. If the defendant is receiving psychotropic
23 medication at a mental health facility at the time he or she is
24 discharged and transferred to the jail, the administration of the

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

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

10 ~~2.~~ 3. If the person is found to continue to be incompetent
11 because the person is a person requiring treatment as defined in
12 Title 43A of the Oklahoma Statutes, the person shall be returned to
13 the custody of the Department of Mental Health and Substance Abuse
14 Services or designee for continued treatment, therapy, or training
15 for competency as provided in paragraph 3 of subsection A of this
16 section;

17 ~~3.~~ 4. If the person is found to be incompetent because the
18 person is intellectually disabled as defined by Title 10 of the
19 Oklahoma Statutes, the court shall issue the appropriate order as
20 set forth in Section 1175.6b of this title;

21 ~~4.~~ 5. If the person is found to be incompetent for reasons
22 other than the person is a person requiring treatment as defined by
23 Title 43A of the Oklahoma Statutes, and other than the person is
24 intellectually disabled as defined in Title 10 of the Oklahoma

1 Statutes, and is also found to be not dangerous as defined by
2 Section 1175.1 of this title, the court shall issue the appropriate
3 order as set forth in Section 1175.6b of this title; or

4 ~~5.~~ 6. If the person is found to be incompetent for reasons
5 other than the person is a person requiring treatment as defined by
6 Title 43A of the Oklahoma Statutes, and other than the person is
7 intellectually disabled as defined in Title 10 of the Oklahoma
8 Statutes, but is also found to be dangerous as defined by Section
9 1175.1 of this title, the court shall issue the appropriate order as
10 set forth in Section 1175.6c of this title.

11 D. If the person is found to be incompetent because the person
12 is a person requiring treatment as defined by Section 1-103 of Title
13 43A of the Oklahoma Statutes, but not capable of achieving
14 competence with treatment within a reasonable period of time as
15 defined by Section 1175.1 of this title, the court shall commence
16 civil commitment proceedings pursuant to Title 43A and shall dismiss
17 without prejudice the criminal proceeding. If the person is
18 subsequently committed to the Department of Mental Health and
19 Substance Abuse Services pursuant to Title 43A, the statute of
20 limitations for the criminal charges which were dismissed by the
21 court shall be tolled until the person is discharged from the
22 Department of Mental Health and Substance Abuse Services pursuant to
23 Section 7-101 of Title 43A of the Oklahoma Statutes.

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

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

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1175.9 of Title 22, unless there
11 is created a duplication in numbering, reads as follows:

12 The Legislative Office of Fiscal Transparency may conduct an in-
13 depth review every year for the next five (5) years on the
14 successes, and any opportunities for improvement including but not
15 limited to the cost savings for the jails, the expedited restoration
16 of competency, the use of jail-based and outpatient competency
17 restoration, and the effects on capacity of forensic bed treatment
18 services. A copy of the report will be sent to the Speaker of the
19 Oklahoma House of Representatives, and President Pro Tempore of the
20 Oklahoma State Senate for review and to provide recommendations. If
21 within the five-year review no significant progress has been made
22 including delays in treatment and over capacity of jails due to
23 volume of competency cases, the amendments made through this
24 legislation to Title 22 of Oklahoma Statutes during the First

1 Session of the Oklahoma Legislature therein sunset and may be
2 revisited by the recommended stakeholder task force to include the
3 Oklahoma Sheriff's Association, the District Attorney's Council, the
4 Oklahoma Department of Mental Health and Substance Abuse Services
5 and the Administrative Director of the Courts.

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

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11 59-1-8318 MAH 04/25/23

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