

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT


No. 1

COMMITTEE AMENDMENT

(Date)


I move to amend Senate Bill No. 552 by substituting the attached floor substitute (Request # 2012) for the title, enacting clause and entire body of the measure.

Submitted by:




Senator Haste


I hereby grant permission for the floor substitute to be adopted.



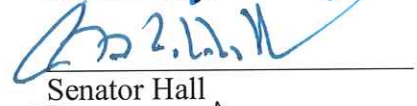
Senator Howard, Chair (required)



Senator Floyd



Senator Gollihare



Senator Hall



Senator Boren




Senator Jech



Senator Brooks



Senator Standridge




Senator Bullard



Senator Stewart



Senator Daniels



Senator Weaver

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Judiciary Committee majority requires seven (7) members' signatures.

Haste-TEK-FS-SB552
3/9/2023 12:33 PM

(Floor Amendments Only) Date and Time Filed: 3-9-23 2:42pm jd

Untimely Amendment Cycle Extended Secondary Amendment

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE

4 FOR

SENATE BILL NO. 552

By: Haste of the Senate

5 and

6 Worthen of the House

7
8 FLOOR SUBSTITUTE

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

1 Section 1175.1. As used in Sections 1175.1 through 1176 of this
2 title:

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

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

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

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

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

21 ~~4. "Criminal proceeding" means every stage of a criminal~~
22 ~~prosecution after arrest and before judgment, including, but not~~
23 ~~limited to, interrogation, lineup, preliminary hearing, motion~~
24 ~~dockets, discovery, pretrial hearings and trial;~~

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

4 6. "Qualified forensic examiner" means any:

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

12 ~~6.~~ 7. "Reasonable period of time" means a period during which a
13 person is receiving treatment for the purpose of restoring
14 competency as required by law not to exceed the lesser of:

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

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

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

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

1 Section 1175.6. Upon the finding by the jury or the court as
2 provided by Section 1175.5 of this title, the court shall issue the
3 appropriate order regarding the person as follows:

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

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

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

14 4. If the person is found to be incompetent for reasons other
15 than the person is a person requiring treatment as defined by
16 Section 1-103 of Title 43A of the Oklahoma Statutes, or for reasons
17 other than the person is intellectually disabled as defined in
18 Section 1408 of Title 10 of the Oklahoma Statutes, the court shall
19 issue the appropriate order as set forth in Section 1175.6c of this
20 title.

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

23 Section 1175.6a. A. 1. If ~~the~~ a person is found to be
24 incompetent prior to conviction because he or she is a person

1 requiring treatment as defined in Section 1-103 of Title 43A of the
2 Oklahoma Statutes, but capable of achieving competence with
3 treatment within a reasonable period of time as defined by Section
4 1175.1 of this title, the court shall suspend the criminal
5 proceedings and order the Department of Mental Health and Substance
6 Abuse Services to provide treatment, therapy or training which is
7 calculated to allow the person to achieve competency. The
8 ~~Department may designate a willing entity to provide such competency~~
9 ~~restoration services on behalf of the Department, provided the~~
10 ~~entity has qualified personnel. The court shall further order the~~
11 ~~Department to take custody of the individual as soon as a forensic~~
12 ~~bed becomes available, unless both the Department and the county~~
13 ~~jail where the person is being held determine that it is in the best~~
14 ~~interests of the person to remain in the county jail. Such~~
15 ~~competency restoration services shall begin within a reasonable~~
16 ~~period of time after the court has determined that the person is not~~
17 ~~competent to stand trial.~~

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

23 ~~B. The Department of Mental Health and Substance Abuse Services~~
24 ~~or designee shall make periodic reports to the court as to the~~

1 ~~competency of the defendant~~ The court shall notify the Department
2 within seventy-two (72) hours of filing an order of commitment by
3 providing a copy of the order to the Department.

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

8 a. the mental illness causing the incompetence,

9 b. the availability of acceptable treatment and if such
10 treatment is available in the community,

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

14 d. whether the person is a person requiring treatment as
15 defined by Section 1-103 of Title 43A of the Oklahoma
16 Statutes.

17 3. The treatment, therapy, or training for competency shall be
18 provided in the jail or detention facility where the person is being
19 held, unless the Department recommends and the court determines that
20 the person can be safely treated in an outpatient community-based
21 setting or the Department determines that the person should be
22 transported to a facility designated by the Department to provide
23 such treatment, therapy, or training. The Department may designate
24 or contract with a willing entity to provide the competency

1 restoration services in the jail or detention facility on behalf of
2 the Department. Competency restoration services shall begin within
3 a reasonable period of time after the court has determined that the
4 person is not competent to stand trial. The Department shall notify
5 the court, district attorney, and defense counsel that treatment has
6 begun and where such treatment is being provided within fourteen
7 (14) days from the date treatment begins. All transportation
8 pursuant to this section shall be conducted by the sheriff's
9 department of the county where the person is charged.

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

21 5. If at any time while the person is being treated in an
22 inpatient facility operated by the Department, the Department
23 determines that he or she is no longer a person requiring treatment
24 as defined in Section 1-103 of Title 43A of the Oklahoma Statutes,

1 the person shall be immediately returned to the jail and the
2 Department shall file a report with the court. In the report, the
3 Department can either recommend a less restrictive treatment
4 alternative including but not limited to an outpatient community-
5 based setting or treatment in a community residential facility or
6 jail or detention-based setting, or take the actions set forth in
7 subsection B of this section. Within thirty (30) days of receipt of
8 the report, the court shall hold a hearing to determine whether
9 competency restoration services should be continued in the
10 outpatient setting or in the jail or detention-based setting.

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

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

23 1. After the court receives notification that the defendant is
24 competent to proceed or no longer meets the criteria for continued

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

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

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

22 ~~3.~~ 4. If the person is found to be incompetent because the
23 person is intellectually disabled as defined by Title 10 of the
24

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

3 ~~4.~~ 5. If the person is found to be incompetent for reasons
4 other than the person is a person requiring treatment as defined by
5 Title 43A of the Oklahoma Statutes, and other than the person is
6 intellectually disabled as defined in Title 10 of the Oklahoma
7 Statutes, and is also found to be not dangerous as defined by
8 Section 1175.1 of this title, the court shall issue the appropriate
9 order as set forth in Section 1175.6b of this title; or

10 ~~5.~~ 6. If the person is found to be incompetent for reasons
11 other than the person is a person requiring treatment as defined by
12 Title 43A of the Oklahoma Statutes, and other than the person is
13 intellectually disabled as defined in Title 10 of the Oklahoma
14 Statutes, but is also found to be dangerous as defined by Section
15 1175.1 of this title, the court shall issue the appropriate order as
16 set forth in Section 1175.6c of this title.

17 D. If the person is found to be incompetent because the person
18 is a person requiring treatment as defined by Section 1-103 of Title
19 43A of the Oklahoma Statutes, but not capable of achieving
20 competence with treatment within a reasonable period of time as
21 defined by Section 1175.1 of this title, the court shall commence
22 civil commitment proceedings pursuant to Title 43A and shall dismiss
23 without prejudice the criminal proceeding. If the person is
24 subsequently committed to the Department of Mental Health and

1 Substance Abuse Services pursuant to Title 43A, the statute of
2 limitations for the criminal charges which were dismissed by the
3 court shall be tolled until the person is discharged from the
4 Department of Mental Health and Substance Abuse Services pursuant to
5 Section 7-101 of Title 43A of the Oklahoma Statutes.

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

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

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

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