

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 771

By: Howard

AS INTRODUCED

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; establishing certain exception for reports to be considered by the court; updating statutory reference; and providing an effective date.

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

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

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

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

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

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

17 5. "Public guardian" means the Office of Public Guardian as  
18 established under the Oklahoma Public Guardianship Act in Section 6-  
19 101 et seq. of Title 30 of the Oklahoma Statutes;

20 6. "Qualified forensic examiner" means any:

- 21 a. psychiatrist with forensic training and experience,
- 22 b. psychologist with forensic training and experience, or
- 23 c. a licensed mental health professional whose forensic
- 24 training and experience enable him or her to form

1 expert opinions regarding mental illness, competency  
2 and dangerousness and who has been approved to render  
3 such opinions by the court; provided, however, a  
4 licensed mental health professional shall not be  
5 qualified to issue expert opinions as to competency or  
6 dangerousness in cases in which a person is alleged to  
7 be incompetent due to intellectual disability; and

8 ~~6.~~ 7. "Reasonable period of time" means a period not to exceed  
9 the lesser of:

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

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

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

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

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

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

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

12 b. In addition, the Developmental Disabilities Services  
13 Division and the Office of Public Guardian of the  
14 Department of Human Services shall receive written  
15 notice from the district attorney who filed the  
16 criminal petition, and be authorized by order of the  
17 court to have a psychologist or other appropriate  
18 clinician participate with professionals assigned by  
19 any other public or private agency in any competency  
20 evaluation ~~wherein~~ where developmental or intellectual  
21 disability may be involved. The psychologist or  
22 clinician employed, by contract or otherwise, by the  
23 Department of Human Services may issue a separate  
24 opinion and recommendation to the court. In such

1           cases where intellectual disability may be involved,  
2           the Office of Public Guardian shall have standing to  
3           participate in any stage of the proceedings as deemed  
4           necessary by the Office.

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

10           3. If the court determines that the person whose competency is  
11 in question may be dangerous as defined in Section 1175.1 of this  
12 title, it shall order the person retained in a secure facility until  
13 the completion of the competency hearing provided in Section 1175.4  
14 of this title. If the court determines the person may be dangerous  
15 as defined in Section 1175.1 of this title because the individual is  
16 a person requiring treatment as defined in Section 1-103 of Title  
17 43A of the Oklahoma Statutes, it may commit the person to the  
18 custody of the Department of Mental Health and Substance Abuse  
19 Services or any other state agency or private facility for the  
20 examination required by this subsection. The person shall be  
21 required to undergo examination for a period of time sufficient for  
22 the qualified forensic ~~examiner(s)~~ examiner or examiners to reach a  
23 conclusion as to competency, and the court shall impose a reasonable  
24 time limitation for such period of examination.

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

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

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

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

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

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

18 6. If the ~~answers to questions~~ requirements of paragraphs 4 and  
19 5 of this subsection are ~~ne~~ not established, ~~why~~ the reasoning for  
20 which the defendant is otherwise incompetent; and

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

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

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

12 Section 1175.4. A. A hearing to determine the competency of  
13 the person whose competency is in question shall be held within  
14 thirty (30) days after the qualified forensic ~~examiner(s)~~ examiner  
15 or examiners have made the determination required in Section 1175.3  
16 of this title. In such cases where intellectual disability may be  
17 involved, the Office of Public Guardian shall have standing to  
18 participate in any stage of the proceedings as deemed necessary by  
19 the Office.

20 B. The court, at the hearing, shall determine by a  
21 preponderance of the evidence if the person is incompetent. Such  
22 determination shall include consideration of all reports prepared by  
23 the qualified forensic ~~examiner(s)~~ examiner or examiners; provided,  
24 however, in any case where intellectual disability may be involved,

1 the court shall be limited to the diagnoses, opinions, and  
2 recommendations of examiners set forth in subparagraph b of  
3 paragraph 1 of subsection D of Section 1175.3 of this title. The  
4 person shall be presumed to be competent for the purposes of the  
5 allocation of the burden of proof and burden of going forward with  
6 the evidence. If the court deems it necessary, or if the person  
7 alleged to be a person requiring treatment, or any relative, friend,  
8 or any person with whom he may reside, or at whose house the person  
9 may be, shall so demand, the court shall schedule the hearing on the  
10 application as a jury trial to be held within seventy-two (72) hours  
11 of the request, excluding weekends and legal holidays, or within as  
12 much additional time as is requested by the attorney of the person  
13 whose competency is in question, upon good cause shown. The jury  
14 shall be composed of six (6) persons having the qualifications  
15 required of jurors in courts of record, summoned to determine the  
16 questions of the person's competency and need for treatment.

17 Whenever a jury is required, the court shall proceed to the  
18 selection of such jury in the manner as provided by law and such  
19 jury shall determine the questions of the competency and need for  
20 treatment of the person whose competency is in question. The jurors  
21 shall receive fees for attendance and mileage as are allowed by law.

22 C. The person whose competency is in question shall have the  
23 right to be present at the hearing on the petition unless it is made  
24 to appear to the court that the presence of the person makes it

1 impossible to conduct the hearing in a reasonable manner. The court  
2 may not decide in advance of the hearing, solely on the basis of the  
3 certificate of the examining doctor or doctors, that the person  
4 whose competency is in question should not be allowed to appear. It  
5 shall be made to appear to the court based on clear and convincing  
6 evidence that alternatives to exclusion were attempted before the  
7 court renders the person's removal for that purpose or the person's  
8 appearance at such hearing improper and unsafe.

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

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

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

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

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

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

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

21 4. The Office of Public Guardian shall report to the court at  
22 least every six (6) months as to the status of the person including,  
23 but not limited to, the type of placement, services provided, level  
24 of supervision, the medical and psychological health of the person,

1 whether the person would be dangerous if conditionally released into  
2 a nonsecure environment, the assistance and services that would be  
3 required for such conditional release and whether the person has  
4 achieved competency;

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

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

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

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

- 8           a. to be eligible for conditional release, the person  
9 shall agree, in writing, that during the period the  
10 person is granted conditional release and is subject  
11 to the provisions thereof, there shall be free  
12 transmission of all pertinent information, including  
13 clinical information regarding the person, among the  
14 person's treatment providers, the appropriate district  
15 attorneys, law enforcement and court personnel. To  
16 effect this agreement, the person shall execute any  
17 releases required by law to allow for the  
18 dissemination of this information,
- 19           b. the court's order placing the person on conditional  
20 release shall include notice that the person's  
21 conditional release may be revoked upon good cause,
- 22           c. the district attorney, as well as any agency or  
23 individual involved in providing services with regard  
24 to the person's conditional release, may prepare and

1 file an affidavit under oath if the district attorney,  
2 agency, or individual believes that the person has  
3 failed to comply with the conditions of release. The  
4 court shall then conduct a hearing to determine if the  
5 person has violated the conditions of release. Notice  
6 of the hearing shall be issued, at least twenty-four  
7 (24) hours before the hearing, to the Department of  
8 Human Services, the person, trial counsel for the  
9 person, and the client advocate general of the  
10 Department of Human Services. After reviewing the  
11 evidence concerning any alleged violation of the  
12 conditions of the release, the person's progress,  
13 treatment alternatives, and the need for public  
14 safety, the court may order no change to the  
15 conditions for the person's release or modify the  
16 conditions of release, and

17 d. the person placed on conditional release shall remain  
18 in a conditional release status until the reviewing  
19 court issues a full release from all conditions.

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

23 a. if found competent by the court or a jury after such  
24 rehearing, criminal proceedings shall be resumed,

1           b.    if the person is found to continue to be incompetent,  
2                    the person shall be returned to either conditional  
3                    release or referred to the Department of Human  
4                    Services for consideration of voluntary assistance.

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

8           SECTION 5.   This act shall become effective November 1, 2023.

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10           59-1-1521           TEK           1/18/2023 6:49:47 PM