

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2387

By: Kannady

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. Sections 1175.1, 1175.3, 1175.4 and 1175.6b,
9 which relate to the determination of competency;
10 providing an exception to certain defined term;
11 directing notice be sent to Office of Public
12 Guardian; authorizing the Office of Public Guardian
13 to have standing to participate in certain
14 proceedings; limiting the court to diagnoses,
15 opinions and recommendations in certain intellectual
16 disability cases; and providing an effective date.

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

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

20 Section 1175.1 As used in Sections 1175.1 through 1176 of this
21 title:

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

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

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

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

12 5. "Qualified forensic examiner" means any:

- 13 a. psychiatrist with forensic training and experience,
- 14 b. psychologist with forensic training and experience, or
- 15 c. a licensed mental health professional whose forensic
16 training and experience enable him or her to form
17 expert opinions regarding mental illness, competency
18 and dangerousness and who has been approved to render
19 such opinions by the court; except that, a licensed
20 mental health professional shall not be qualified to
21 issue expert opinions as to competency or
22 dangerousness in cases wherein the person is alleged
23 to be incompetent due to intellectual disability;

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1 6. "Reasonable period of time" means a period not to exceed the
2 lesser of:

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

6 7. "Public guardian" means the Office of Public Guardian as
7 established under the Oklahoma Public Guardianship Act in Section 6-
8 101 et seq. of Title 30 of the Oklahoma Statutes.

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

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

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

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

23 D. 1. a. If the court finds there is a doubt as to the
24 competency of the person, it shall order the person to

1 be examined by the Department of Mental Health and
2 Substance Abuse Services or by a qualified forensic
3 examiner designated by the Department to perform
4 competency examinations.

5 b. In addition, the Developmental Disabilities Services
6 Division and the Office of Public Guardian of the
7 Department of Human Services shall receive written
8 notice from the district attorney who filed the
9 criminal petition, and be authorized by order of the
10 court to have a psychologist or other appropriate
11 clinician participate with professionals assigned by
12 any other public or private agency in any competency
13 evaluation wherein developmental or intellectual
14 disability may be involved. The psychologist or
15 clinician employed, by contract or otherwise, by the
16 Department of Human Services may issue a separate
17 opinion and recommendation to the court. In cases
18 wherein intellectual disability may be involved, the
19 Office of Public Guardian shall have standing to
20 participate in any stage of the proceedings it chooses
21 or deems necessary.

22 2. The person shall be examined by a qualified forensic
23 examiner on an outpatient basis prior to referral for any necessary
24 inpatient evaluation, as ordered by the court. The outpatient

1 examination may be conducted in the community, the jail or detention
2 facility where the person is held.

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

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

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

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

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

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

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

11 6. If the answers to questions 4 and 5 are no, why the
12 defendant is incompetent; and

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

15 F. Upon completion of the competency evaluation, the Department
16 of Mental Health and Substance Abuse Services or qualified forensic
17 examiner designated by the Department to perform competency
18 examinations shall notify the court of its findings. If the person
19 is in the custody of the Department of Mental Health and Substance
20 Abuse Services, the person shall be returned to the court in the
21 customary manner within five (5) business days. If the person is
22 not returned within that time, the county in which the proceedings
23 are to be held shall pay the costs of maintaining the person at the

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1 institution or facility for the period of time the person remains at
2 the institution or facility in excess of the five-day period.

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

5 Section 1175.4 A. A hearing to determine the competency of the
6 person whose competency is in question shall be held within thirty
7 (30) days after the qualified forensic examiner(s) have made the
8 determination required in Section 1175.3 of this title.

9 B. The court, at the hearing, shall determine by a
10 preponderance of the evidence if the person is incompetent. Such
11 determination shall include consideration of all reports prepared by
12 the qualified forensic examiner(s); except that, the court shall be
13 limited to the diagnoses, opinions, and recommendations of examiners
14 identified and set forth in subparagraph b of paragraph 1 of
15 subsection D of Section 1175.3 of this title in any case wherein
16 intellectual disability may be involved. The person shall be
17 presumed to be competent for the purposes of the allocation of the
18 burden of proof and burden of going forward with the evidence. If
19 the court deems it necessary, or if the person alleged to be a
20 person requiring treatment, or any relative, friend, or any person
21 with whom he may reside, or at whose house the person may be, shall
22 so demand, the court shall schedule the hearing on the application
23 as a jury trial to be held within seventy-two (72) hours of the
24 request, excluding weekends and legal holidays, or within as much

1 additional time as is requested by the attorney of the person whose
2 competency is in question, upon good cause shown. The jury shall be
3 composed of six (6) persons having the qualifications required of
4 jurors in courts of record, summoned to determine the questions of
5 the person's competency and need for treatment. Whenever a jury is
6 required, the court shall proceed to the selection of such jury in
7 the manner as provided by law and such jury shall determine the
8 questions of the competency and need for treatment of the person
9 whose competency is in question. The jurors shall receive fees for
10 attendance and mileage as are allowed by law.

11 C. The person whose competency is in question shall have the
12 right to be present at the hearing on the petition unless it is made
13 to appear to the court that the presence of the person makes it
14 impossible to conduct the hearing in a reasonable manner. The court
15 may not decide in advance of the hearing, solely on the basis of the
16 certificate of the examining doctor or doctors, that the person
17 whose competency is in question should not be allowed to appear. It
18 shall be made to appear to the court based on clear and convincing
19 evidence that alternatives to exclusion were attempted before the
20 court renders the person's removal for that purpose or the person's
21 appearance at such hearing improper and unsafe.

22 D. All witnesses shall be subject to cross-examination in the
23 same manner as is provided by law. If so stipulated by counsel for
24 a person whose competency is in question, the district attorney and

1 the court, testimony may be given by telephone or other electronic
2 transmitting device approved by the court. No statement, admission
3 or confession made by the person whose competency is in question
4 obtained during the examination for competency may be used for any
5 purpose except for proceedings under this act. No such statement,
6 admission or confession may be used against such person in any
7 criminal action whether pending at the time the hearing is held or
8 filed against such person at any later time, directly, indirectly or
9 in any manner or form.

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

14 F. In any case wherein intellectual disability may be involved,
15 the Office of Public Guardian shall have standing to participate in
16 any hearing held pursuant to this section that it chooses or deems
17 necessary.

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

20 Section 1175.6b A. If the person is found to be incompetent
21 primarily because the person is intellectually disabled as defined
22 in Section 1408 of Title 10 of the Oklahoma Statutes, and is also
23 found by the court to be dangerous as defined by Section 1175.1 of
24 this title, the court shall suspend the criminal proceedings, and

1 shall place the person into the custody of the Office of Public
2 Guardian. The Office of Public Guardian shall act with all powers
3 set forth in the Oklahoma Public Guardianship Act, and:

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

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

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

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

22 5. If the person is determined by the Office of Public Guardian
23 to have regained competency or that conditional release to a private
24 guardian or other caretaker is appropriate, a hearing shall be

1 scheduled within twenty (20) days. If found competent by the court
2 or a jury after such rehearing, criminal proceedings shall be
3 resumed. If the court finds conditional release to be appropriate,
4 the court shall make an appropriate order for conditional release;
5 and

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

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

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

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- 1 a. to be eligible for conditional release, the person
2 shall agree, in writing, that during the period the
3 person is granted conditional release and is subject
4 to the provisions thereof, there shall be free
5 transmission of all pertinent information, including
6 clinical information regarding the person, among the
7 person's treatment providers, the appropriate district
8 attorneys, law enforcement and court personnel. To
9 effect this agreement, the person shall execute any
10 releases required by law to allow for the
11 dissemination of this information,
- 12 b. the court's order placing the person on conditional
13 release shall include notice that the person's
14 conditional release may be revoked upon good cause,
- 15 c. the district attorney, as well as any agency or
16 individual involved in providing services with regard
17 to the person's conditional release, may prepare and
18 file an affidavit under oath if the district attorney,
19 agency, or individual believes that the person has
20 failed to comply with the conditions of release. The
21 court shall then conduct a hearing to determine if the
22 person has violated the conditions of release. Notice
23 of the hearing shall be issued, at least twenty-four
24 (24) hours before the hearing, to the Department of

1 Human Services, the person, trial counsel for the
2 person, and the client advocate general of the
3 Department of Human Services. After reviewing the
4 evidence concerning any alleged violation of the
5 conditions of the release, the person's progress,
6 treatment alternatives, and the need for public
7 safety, the court may order no change to the
8 conditions for the person's release or modify the
9 conditions of release, and

10 d. the person placed on conditional release shall remain
11 in a conditional release status until the reviewing
12 court issues a full release from all conditions.

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

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

22 C. The Office of Public Guardian shall have standing to
23 participate in any proceedings held pursuant to subsections A and B
24 of this section that it chooses or deems necessary.

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

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