

STATE OF OKLAHOMA

1st Session of the 60th Legislature (2025)

SENATE BILL 1089

By: Rosino

AS INTRODUCED

An Act relating to determination of competency; amending 22 O.S. 2021, Section 1175.2, which relates to application and suspension of criminal proceedings; directing court to conduct competency proceedings for persons accused of certain crimes; establishing procedures for court to conduct competency proceedings for persons found to be incompetent and dangerous and accused of certain crimes; requiring finding of clear and convincing evidence for certain determinations; granting standing to Office of Public Guardian under certain circumstances; requiring dismissal of case upon certain findings; requiring continuation of suspension of criminal proceedings upon certain finding; prohibiting release of certain persons for specified time period; requiring certain reporting from Department of Mental Health and Substance Abuse Services to the district court; establishing procedures for person determined to have regained competency; requiring review hearings at specified intervals; requiring release of person under certain circumstances; updating statutory language; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 1175.2, is amended to read as follows:

1 Section 1175.2. A. No person shall be subject to any criminal
2 procedures after the person is determined to be incompetent except
3 as provided in Sections 1175.1 through 1175.8 and Section 2 of this
4 act of this title. The question of the incompetency of a person may
5 be raised by the person, the attorney for the person whose
6 competency is in question, or the district attorney, by an
7 application for determination of competency. The application for
8 determination of competency shall allege that the person is
9 incompetent to undergo further proceedings, and shall state facts
10 sufficient to raise a doubt as to the competency of the person. The
11 court, at any time, may initiate a competency determination on its
12 own motion, without an application, if the court has a doubt as to
13 the competency of the person.

14 If the court so initiates such an application, it may appoint
15 the district attorney for the purpose of proceeding with the
16 application. If the district attorney opposes the application of
17 the court, and by reason of a conflict of interest could not
18 represent the court as applicant, then the court shall appoint
19 private counsel. ~~Said~~ The private counsel shall be reasonably
20 compensated by the court fund.

21 B. A copy of the application for determination of competency
22 and a notice, ~~as hereinafter~~ in this section shall be
23 served personally at least one (1) day before the first hearing on
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1 the application for a competency determination. The notice shall
2 contain the following information:

3 1. The definition provided by Section 1175.1 of this title of
4 competency and incompetency;

5 2. That, upon request, the hearing on the application may be
6 conducted as a jury trial as provided in Section 1175.4 of this
7 title;

8 3. That the petitioner and any witnesses identified in the
9 application may offer testimony under oath at the hearings on the
10 petition and that the defendant may not be called to testify against
11 the defendant's will, unless the application is initiated by the
12 defendant;

13 4. That if the person whose competency is in question does not
14 have an attorney, the court will appoint an attorney for the person
15 who shall represent the person until final disposition of the case;

16 5. That if the person whose competency is in question is
17 indigent or poor, the court will pay the attorney fees; and

18 6. That the person whose competency is in question shall be
19 afforded such other rights as are guaranteed by state and federal
20 law and that such rights include a trial by jury, if demanded. The
21 notice shall be served upon the person whose competency is in
22 question, upon the person's father, mother, husband, or wife or, in
23 their absence, someone of the next of kin, of full age, if any said
24 persons are known to be residing within the county, and upon any of

1 said relatives residing outside of the county, and within the state,
2 as may be ordered by the court, and also upon the person with whom
3 the person whose competency is in question may reside, or at whose
4 house the person may be. The person making such service shall make
5 affidavit of the same and file such notice, with proof of service,
6 with the district court. This notice may be served in any part of
7 this state.

8 C. Any criminal proceedings against a person whose competency
9 is in question shall be suspended pending the determination of the
10 competency of the person.

11 D. Notwithstanding the provisions of Sections 1175.1 through
12 1175.8 of this title, if a person whose competency is in question is
13 charged with or accused of a felony offense listed in Section 13.1
14 of Title 21 of the Oklahoma Statutes or a violent crime listed in
15 Section 571 of Title 57 of the Oklahoma Statutes, the court shall
16 proceed as provided in Section 2 of this act.

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1175.9 of Title 22, unless there
19 is created a duplication in numbering, reads as follows:

- 20 A. If a person is:
- 21 1. Found to be incompetent as provided by Section 1175.5 of
 - 22 Title 22 of the Oklahoma Statutes;
 - 23 2. Found to be dangerous as defined by Section 1175.1 of Title
 - 24 22 of the Oklahoma Statutes; and

1 3. Charged with a felony offense listed in Section 13.1 of
2 Title 21 of the Oklahoma Statutes or a violent crime listed in
3 Section 571 of Title 57 of the Oklahoma Statutes,
4 the district court acting as finder of fact shall conduct a hearing
5 to determine the sufficiency of the evidence. The prosecutor and
6 the attorney for the person may introduce evidence relevant to the
7 question of the person's guilt of the crime charged. The finding of
8 clear and convincing evidence may be based upon hearsay evidence in
9 whole or in part. In such cases where intellectual disability may
10 be involved, the Office of Public Guardian shall have standing to
11 participate in any stage of the proceedings.

12 B. If the district court finds that there is not clear and
13 convincing evidence to establish that the person committed a felony
14 offense listed in Section 13.1 of Title 21 of the Oklahoma Statutes
15 or a violent crime listed in Section 571 of Title 57 of the Oklahoma
16 Statutes, the district court shall dismiss the criminal case without
17 prejudice; provided, however, nothing in this section shall prevent
18 the state from initiating civil commitment proceedings pursuant to
19 Title 43A of the Oklahoma Statutes.

20 C. If the district court finds by clear and convincing evidence
21 that the person committed a felony offense listed in Section 13.1 of
22 Title 21 of the Oklahoma Statutes or a violent crime listed in
23 Section 571 of Title 57 of the Oklahoma Statutes, and enters a
24 finding that the person is incompetent to proceed and is dangerous:
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1 1. The district court shall continue the suspension of the
2 criminal proceedings, and the person shall remain in the custody of
3 the Department of Mental Health and Substance Abuse Services or
4 designee for treatment;

5 2. The person shall not be released or discharged by the
6 Department or designee except:

7 a. pursuant to an order of the district court which
8 committed the person, or

9 b. upon expiration of the period of time equal to the
10 maximum sentence to which the person would have been
11 subject had the person been convicted in a criminal
12 proceeding of the felony offense listed in Section
13 13.1 of Title 21 of the Oklahoma Statutes or the
14 violent crime listed in Section 571 of Title 57 of the
15 Oklahoma Statutes;

16 3. The Department or designee shall make periodic reports to
17 the district court as to the competency of the person. Significant
18 changes in the person's conditions including, but not limited to,
19 competency and dangerousness, shall be reported in writing to the
20 district court, the office that filed the criminal petition, and the
21 attorney for the person;

22 4. The Board of Mental Health and Substance Abuse Services
23 shall adopt rules and procedures to ensure that the status of
24 persons involuntarily committed to the facilities of the Department
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1 for treatment by a district court pursuant to this section is
2 reviewed at least once every three (3) months, and the Department
3 shall take appropriate action based upon this review;

4 5. If the person is determined by the Department or designee to
5 have regained competency or is no longer dangerous, the court shall
6 set a hearing date, which shall be as soon as practicable, but at
7 least five (5) court days after service of notice to the office that
8 filed the criminal petition and the attorney for the person. At the
9 hearing, the district court shall determine by clear and convincing
10 evidence the issues of competency and dangerousness:

- 11 a. if the person is found to be competent, the criminal
12 proceedings shall be resumed, or
- 13 b. if the person is found to be incompetent and
14 dangerous, the person shall be returned to the custody
15 of the Department or designee for continued treatment;
16 and

17 6. The district court shall conduct a hearing upon notice to
18 the parties and the Department or designee charged with treating the
19 person, at least every two (2) years. At the hearing, the district
20 court shall determine by clear and convincing evidence the issues of
21 competency and dangerousness:

- 22 a. if the person is found to be competent, the criminal
23 proceedings shall be resumed, or

1 b. if the person is found to be incompetent and
2 dangerous, the person shall be returned to the custody
3 of the Department or designee for treatment. The
4 court shall review the person's competency and
5 dangerousness at least every two (2) years until the
6 expiration of the period of commitment equal to the
7 maximum sentence to which the person would have been
8 subject had he or she been convicted in a criminal
9 proceeding of a felony offense listed in Section 13.1
10 of Title 21 of the Oklahoma Statutes or a violent
11 crime listed in Section 571 of Title 57 of the
12 Oklahoma Statutes; provided, however, if the district
13 court finds at any review hearing that the person is
14 no longer dangerous, the person shall be released.

15 SECTION 3. This act shall become effective November 1, 2025.

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