

An Act

ENROLLED SENATE
BILL NO. 552

By: Haste of the Senate

and

Worthen and Munson of the
House

An Act relating to determination of competence; amending 22 O.S. 2021, Sections 1175.1, 1175.6a, and 1175.8, which relate to procedures for determinations of competency; modifying and adding definitions; requiring notification of court order of commitment; requiring certain report within specified time period; establishing requirements for the provision of certain treatment, therapy, or training; requiring return of certain persons to jail; requiring submission of certain reports to the court; requiring certain hearings; requiring transport of 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; 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.

SUBJECT: Determinations of competence

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

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

4. "Incompetent" or "incompetency" means the present inability 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;

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

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

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

6. "Qualified forensic examiner" means any:

- a. psychiatrist with forensic training and experience,
- b. psychologist with forensic training and experience, or
- c. a licensed mental health professional whose forensic training and experience enable him or her to form expert opinions regarding mental illness, competency

and dangerousness and who has been approved to render such opinions by the court; and

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

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

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

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

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

Section 1175.6a. A. 1. If ~~the~~ a person is found to be incompetent prior to conviction because he or she is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and order the Department of Mental Health and Substance Abuse Services to provide treatment, therapy or training which is calculated to allow the person to achieve competency. ~~The Department may designate a willing entity to provide such competency restoration services on behalf of the Department, provided the entity has qualified personnel. The court shall further order the Department to take custody of the individual as soon as a forensic bed becomes available, unless both the Department and the county jail where the person is being held determine that it is in the best interests of the person to remain in the county jail. Such competency restoration services shall begin within a reasonable period of time after the court has determined that the person is not competent to stand trial.~~

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

~~B. The Department of Mental Health and Substance Abuse Services or designee shall make periodic reports to the court as to the competency of the defendant. The court shall notify the Department within seventy-two (72) hours of filing an order of commitment by providing a copy of the order to the Department.~~

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

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

3. The treatment, therapy, or training for competency shall be provided in the jail or detention facility where the person is being held, unless the Department recommends and the court determines that the person can be safely treated in an outpatient community-based setting or the Department determines that the person should be transported to a facility designated by the Department to provide such treatment, therapy, or training. The Department may designate or contract with a willing entity to provide the competency restoration services in the jail or detention facility on behalf of the Department. Competency restoration services shall begin within a reasonable period of time after the court has determined that the person is not competent to stand trial. The Department shall notify

the court, district attorney, and defense counsel that treatment has begun and where such treatment is being provided within fourteen (14) days from the date treatment begins. The Department shall assume liability to the fullest extent permitted by law for any services provided by the Department, or a contracted or designated entity on behalf of the Department, for individuals receiving competency treatment, therapy or training while being held in a jail, public trust or detention facility. A legally recognized business entity under contract with city, county, or state entities that provides medical care to inmates or detainees in the custody or control of law enforcement agencies, including, but not limited to, competency restoration services, and any employee of the contracted legally recognized business entity, shall be an employee of the state pursuant to Section 152 of the Governmental Tort Claims Act.

4. If at any time while the person is being treated in an inpatient facility operated by the Department the court determines that he or she is no longer a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, the court may order the immediate return of the person to jail and the Department shall file a report with the court. In the report, the Department can either recommend a less restrictive treatment alternative including but not limited to an outpatient community-based setting or treatment in a community residential facility or jail or detention-based setting, or take the actions set forth in subsection B of this section. Within thirty (30) days of the return of the person to jail, the court shall hold a hearing to determine whether competency restoration services should be continued in the outpatient setting or in the jail or detention-based setting.

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

C. If the person is determined by the Department of Mental Health and Substance Abuse Services or designee to have regained competency, or is no longer incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma

Statutes, a competency hearing shall be scheduled within twenty (20) days:

1. After the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment, the defendant shall be transported to the jurisdiction of the court that entered the order for commitment for the competency hearing. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administration of the medication shall continue unless the jail physician documents the need to change or discontinue it. The physicians of the jail and the Department shall collaborate to ensure that any change in medication does not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; provided, however, the jail physician has final authority regarding the administration of medication to an inmate in jail;

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

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

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

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

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

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

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

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

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

The Legislative Office of Fiscal Transparency may conduct an in-depth review every year for the next five (5) years on the successes, and any opportunities for improvement including but not limited to the cost savings for the jails, the expedited restoration of competency, the use of jail-based and outpatient competency restoration, and the effects on capacity of forensic bed treatment

services. A copy of the report will be sent to the Speaker of the Oklahoma House of Representatives and President Pro Tempore of the Oklahoma State Senate for review and to provide recommendations. If within the five-year review no significant progress has been made, including delays in treatment and overcapacity of jails due to volume of competency cases, the amendments made through this legislation to Title 22 of the Oklahoma Statutes may be revisited by the recommended stakeholder task force to include the Oklahoma Sheriffs' Association, the District Attorney's Council, the Oklahoma Department of Mental Health and Substance Abuse Services and the Administrative Director of the Courts.

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

Passed the Senate the 23rd day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____