

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 552

By: Haste of the Senate

and

Worthen of the House

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10 COMMITTEE SUBSTITUTE

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

1 Section 1175.6a A. 1. If ~~the~~ a person is found to be
2 incompetent prior to conviction because he or she is a person
3 requiring treatment as defined in Section 1-103 of Title 43A of the
4 Oklahoma Statutes, but capable of achieving competence with
5 treatment within a reasonable period of time as defined by Section
6 1175.1 of this title, the court shall suspend the criminal
7 proceedings and order the Department of Mental Health and Substance
8 Abuse Services to provide treatment, therapy or training which is
9 calculated to allow the person to achieve competency. ~~The~~
10 ~~Department may designate a willing entity to provide such competency~~
11 ~~restoration services on behalf of the Department, provided the~~
12 ~~entity has qualified personnel. The court shall further order the~~
13 ~~Department to take custody of the individual as soon as a forensic~~
14 ~~bed becomes available, unless both the Department and the county~~
15 ~~jail where the person is being held determine that it is in the best~~
16 ~~interests of the person to remain in the county jail. Such~~
17 ~~competency restoration services shall begin within a reasonable~~
18 ~~period of time after the court has determined that the person is not~~
19 ~~competent to stand trial.~~

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

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

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

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

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

1 such treatment, therapy, or training. The Department may designate
2 or contract with a willing entity to provide the competency
3 restoration services in the jail or detention facility on behalf of
4 the Department. Competency restoration services shall begin within
5 a reasonable period of time after the court has determined that the
6 person is not competent to stand trial. The Department shall notify
7 the court, district attorney, and defense counsel that treatment has
8 begun and where such treatment is being provided within fourteen
9 (14) days from the date treatment begins.

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

24

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

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

13 1. After the court receives notification that the defendant is
14 competent to proceed or no longer meets the criteria for continued
15 commitment, the defendant shall be transported to the jurisdiction
16 of the court that entered the order for commitment for the
17 competency hearing. If the defendant is receiving psychotropic
18 medication at a mental health facility at the time he or she is
19 discharged and transferred to the jail, the administration of the
20 medication shall continue unless the jail physician documents the
21 need to change or discontinue it. The physicians of the jail and
22 the Department shall collaborate to ensure that any change in
23 medication does not adversely affect the defendant's mental health
24 status or his or her ability to continue with court proceedings;

1 provided, however, the jail physician has final authority regarding
2 the administration of medication to an inmate in jail;

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

5 ~~2.~~ 3. If the person is found to continue to be incompetent
6 because the person is a person requiring treatment as defined in
7 Title 43A of the Oklahoma Statutes, the person shall be returned to
8 the custody of the Department of Mental Health and Substance Abuse
9 Services or designee for continued treatment, therapy, or training
10 for competency as provided in paragraph 3 of subsection A of this
11 section;

12 ~~3.~~ 4. If the person is found to be incompetent because the
13 person is intellectually disabled as defined by Title 10 of the
14 Oklahoma Statutes, the court shall issue the appropriate order as
15 set forth in Section 1175.6b of this title;

16 ~~4.~~ 5. If the person is found to be incompetent for reasons
17 other than the person is a person requiring treatment as defined by
18 Title 43A of the Oklahoma Statutes, and other than the person is
19 intellectually disabled as defined in Title 10 of the Oklahoma
20 Statutes, and is also found to be not dangerous as defined by
21 Section 1175.1 of this title, the court shall issue the appropriate
22 order as set forth in Section 1175.6b of this title; or

23 ~~5.~~ 6. If the person is found to be incompetent for reasons
24 other than the person is a person requiring treatment as defined by

1 Title 43A of the Oklahoma Statutes, and other than the person is
2 intellectually disabled as defined in Title 10 of the Oklahoma
3 Statutes, but is also found to be dangerous as defined by Section
4 1175.1 of this title, the court shall issue the appropriate order as
5 set forth in Section 1175.6c of this title.

6 D. If the person is found to be incompetent because the person
7 is a person requiring treatment as defined by Section 1-103 of Title
8 43A of the Oklahoma Statutes, but not capable of achieving
9 competence with treatment within a reasonable period of time as
10 defined by Section 1175.1 of this title, the court shall commence
11 civil commitment proceedings pursuant to Title 43A and shall dismiss
12 without prejudice the criminal proceeding. If the person is
13 subsequently committed to the Department of Mental Health and
14 Substance Abuse Services pursuant to Title 43A, the statute of
15 limitations for the criminal charges which were dismissed by the
16 court shall be tolled until the person is discharged from the
17 Department of Mental Health and Substance Abuse Services pursuant to
18 Section 7-101 of Title 43A of the Oklahoma Statutes.

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

21 Section 1175.8 If the medical supervisor reports that the
22 person appears to have achieved competency after a finding of
23 incompetency, the court shall hold another competency hearing to
24 determine if the person has achieved competency. If competency has

1 been achieved, the criminal proceedings shall be immediately resumed
2 by setting a competency hearing within twenty (20) business days.

3 SECTION 4. It being immediately necessary for the preservation
4 of the public peace, health or safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
9 04/13/2023 - DO PASS, As Amended.

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