

1 ENGROSSED SENATE
2 BILL NO. 771

By: Gollihare of the Senate

3 and

4 Lawson of the House

5
6 An Act relating to determination of competence;
7 amending 22 O.S. 2021, Sections 1175.1, 1175.3,
8 1175.4, and 1175.6b, which relate to definitions and
9 procedures for determining competency; modifying
10 definitions; providing for standing for Office of
11 Public Guardian to participate in certain
12 proceedings; requiring court to consider certain
13 recommendations; updating statutory reference; and
14 providing an effective date.

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

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

18 Section 1175.1. As used in Sections 1175.1 through 1176 of this
19 title:

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

24 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

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 ~~no~~ 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

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 recommendations of examiners set forth in subparagraph b of
2 paragraph 1 of subsection D of Section 1175.3 of this title shall be
3 considered by the court. The person shall be presumed to be
4 competent for the purposes of the allocation of the burden of proof
5 and burden of going forward with the evidence. If the court deems
6 it necessary, or if the person alleged to be a person requiring
7 treatment, or any relative, friend, or any person with whom he may
8 reside, or at whose house the person may be, shall so demand, the
9 court shall schedule the hearing on the application as a jury trial
10 to be held within seventy-two (72) hours of the request, excluding
11 weekends and legal holidays, or within as much additional time as is
12 requested by the attorney of the person whose competency is in
13 question, upon good cause shown. The jury shall be composed of six
14 (6) persons having the qualifications required of jurors in courts
15 of record, summoned to determine the questions of the person's
16 competency and need for treatment. Whenever a jury is required, the
17 court shall proceed to the selection of such jury in the manner as
18 provided by law and such jury shall determine the questions of the
19 competency and need for treatment of the person whose competency is
20 in question. The jurors shall receive fees for attendance and
21 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 Statutes⁷ 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 proceedings⁷ 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.

24

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, 2024.

9 Passed the Senate the 5th day of March, 2024.

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11 _____
12 Presiding Officer of the Senate

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14 Passed the House of Representatives the ____ day of _____,
15 2024.

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17 _____
18 Presiding Officer of the House
19 of Representatives

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