

1 STATE OF OKLAHOMA

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

3 SENATE BILL 552

By: Haste

4
5
6 AS INTRODUCED

7 An Act relating to determination of competence;
8 amending 22 O.S. 2021, Sections 1175.1, 1175.3,
9 1175.6, 1175.6a, 1175.6b, and 1175.8, which relate to
10 procedures for determinations of competency;
11 modifying definitions; requiring criminal proceedings
12 to be resumed within certain time period upon
13 determination of competency; establishing
14 requirements for certain treatment; clarifying
15 statute of limitations for certain charges; updating
16 statutory language; 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. "Criminal proceeding" means every stage of a criminal
2 prosecution after arrest and before judgment, including, but not
3 limited to, interrogation, lineup, preliminary hearing, motion
4 dockets, discovery, pretrial hearings and trial;

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

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

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

19 5. "Public guardian" means the Office of Public Guardian as
20 established under the Oklahoma Public Guardianship Act in Section 6-
21 101 et seq. of Title 30 of the Oklahoma Statutes;

22 6. "Qualified forensic examiner" means any:

- 23 a. psychiatrist with forensic training and experience,
24 b. psychologist with forensic training and experience, or

1 c. a licensed mental health professional whose forensic
2 training and experience enable him or her to form
3 expert opinions regarding mental illness, competency
4 and dangerousness and who has been approved to render
5 such opinions by the court; provided, however, a
6 licensed mental health professional shall not be
7 qualified to issue expert opinions as to competency or
8 dangerousness in cases in which a person is alleged to
9 be incompetent due to intellectual disability; and

10 ~~6.~~ 7. "Reasonable period of time" means a period that starts on
11 the first day of active treatment not to exceed the lesser of:

- 12 a. ~~the maximum sentence specified for the most serious a~~
13 ~~misdemeanor offense, with which the defendant is~~
14 ~~charged, or~~ no longer than six (6) months,
15 b. ~~a maximum period of two (2) years; and~~

16 ~~7. "Public guardian" means the Office of Public Guardian as~~
17 ~~established under the Oklahoma Public Guardianship Act in Section 6-~~
18 ~~101 et seq. of Title 30 of the Oklahoma Statutes~~

19 for a felony offense, no longer than one (1) year, or

- 20 c. the maximum length of the sentence if such sentence is
21 less than the time period in subparagraph a or b of
22 this paragraph.

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

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

5 B. The court shall hold a hearing on the date provided. At the
6 hearing, the court shall examine the application for determination
7 of competency to determine if it alleges facts sufficient to raise a
8 doubt as to the competency of the person. Any additional evidence
9 tending to create a doubt as to the competency of the person may be
10 presented at this hearing.

11 C. If the court finds there is no doubt as to the competency of
12 the person, it shall order the criminal proceedings to immediately
13 resume by setting a competency hearing within thirty (30) business
14 days.

15 D. 1. a. If the court finds there is a doubt as to the
16 competency of the person, it shall order the person to
17 be examined by the Department of Mental Health and
18 Substance Abuse Services or by a qualified forensic
19 examiner designated by the Department to perform
20 competency examinations.

21 b. In addition, the Developmental Disabilities Services
22 Division of the Department of Human Services shall
23 receive written notice from the district attorney who
24 filed the criminal petition, and be authorized by

1 order of the court to have a psychologist or other
2 appropriate clinician participate with professionals
3 assigned by any other public or private agency in any
4 competency evaluation wherein developmental or
5 intellectual disability may be involved. The
6 psychologist or clinician employed, by contract or
7 otherwise, by the Department of Human Services may
8 issue a separate opinion and recommendation to the
9 court.

10 2. The person shall be examined by a qualified forensic
11 examiner on an outpatient basis prior to referral for any necessary
12 inpatient evaluation, as ordered by the court. The outpatient
13 examination may be conducted in the community, the jail or detention
14 facility where the person is held.

15 3. If the court determines that the person whose competency is
16 in question may be dangerous as defined in Section 1175.1 of this
17 title, it shall order the person retained in a secure facility until
18 the completion of the competency hearing provided in Section 1175.4
19 of this title. If the court determines the person may be dangerous
20 as defined in Section 1175.1 of this title because the individual is
21 a person requiring treatment as defined in Section 1-103 of Title
22 43A of the Oklahoma Statutes, it may commit the person to the
23 custody of the Department of Mental Health and Substance Abuse
24 Services or any other state agency or private facility for the

1 examination required by this subsection. The person shall be
2 required to undergo examination for a period of time sufficient for
3 the qualified forensic ~~examiner(s)~~ examiner or examiners to reach a
4 conclusion as to competency, and the court shall impose a reasonable
5 time limitation for such period of examination.

6 E. The qualified forensic ~~examiner(s)~~ examiner or examiners
7 shall receive instructions that they shall examine the patient to
8 determine:

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

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

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

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

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

1 6. If the ~~answers to questions~~ requirements of paragraphs 4 and
2 5 of this subsection are ~~ne~~ not established, ~~why~~ the reasoning for
3 which the defendant is otherwise incompetent; and

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

6 F. Upon completion of the competency evaluation, the Department
7 of Mental Health and Substance Abuse Services or qualified forensic
8 examiner designated by the Department to perform competency
9 examinations shall notify the court of its findings. If the person
10 is in the custody of the Department of Mental Health and Substance
11 Abuse Services, the person shall be returned to the court in the
12 customary manner within five (5) business days. If the person is
13 not returned within that time, the county in which the proceedings
14 are to be held shall pay the costs of maintaining the person at the
15 institution or facility for the period of time the person remains at
16 the institution or facility in excess of the five-day period.

17 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1175.6, is
18 amended to read as follows:

19 Section 1175.6. Upon the finding by the jury or the court as
20 provided by Section 1175.5 of this title, the court shall issue the
21 appropriate order regarding the person as follows:

22 1. If the person is found to be competent, the criminal
23 proceedings shall be immediately resumed by setting a competency
24 hearing within thirty (30) business days;

1 2. If the person is found to be incompetent because the person
2 is a person requiring treatment as defined in Title 43A of the
3 Oklahoma Statutes, the court shall issue the appropriate order as
4 set forth in Section 1175.6a of this title;

5 3. If the person is found to be incompetent because the person
6 is intellectually disabled as defined in Section 1408 of Title 10 of
7 the Oklahoma Statutes, the court shall issue the appropriate order
8 as set forth in Section 1175.6b of this title; and

9 4. 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, or for reasons
12 other than the person is intellectually disabled as defined in
13 Section 1408 of Title 10 of the Oklahoma Statutes, the court shall
14 issue the appropriate order as set forth in Section 1175.6c of this
15 title.

16 SECTION 4. AMENDATORY 22 O.S. 2021, Section 1175.6a, is
17 amended to read as follows:

18 Section 1175.6a. A. 1. If ~~the~~ a person charged with any
19 felony or a violent misdemeanor is found to be incompetent prior to
20 conviction because he or she is a person requiring treatment as
21 defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but
22 capable of achieving competence with treatment within a reasonable
23 period of time as defined by Section 1175.1 of this title, the court
24 shall suspend the criminal proceedings and order the Department of
25

1 Mental Health and Substance Abuse Services to provide treatment,
2 therapy or training which is calculated to allow the person to
3 achieve competency. Such treatment, therapy, or training shall be
4 provided in the jail or detention facility where the person is being
5 held, unless the court determines that the person can be treated in
6 an outpatient setting or the Department determines that the person
7 should be transported to a facility designated by the Department to
8 provide such treatment, therapy, or training. The Department may
9 designate or contract with a willing entity to provide such
10 competency restoration services in the jail or detention facility on
11 behalf of the Department, provided the entity has qualified
12 personnel. ~~The court shall further order the Department to take~~
13 ~~custody of the individual as soon as a forensic bed becomes~~
14 ~~available, unless both the Department and the county jail where the~~
15 ~~person is being held determine that it is in the best interests of~~
16 ~~the person to remain in the county jail.~~ Such competency
17 restoration services shall begin within a reasonable period of time
18 after the court has determined that the person is not competent to
19 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~~ All transportation pursuant

1 to this section shall be conducted by the county sheriff department
2 of the county where the person is charged.

3 2. If a person charged with a non-violent misdemeanor is found
4 to be incompetent prior to conviction because he or she is a person
5 requiring treatment as defined in Section 1-103 of Title 43A of the
6 Oklahoma Statutes, the court shall commence civil commitment
7 proceedings pursuant to Title 43A of the Oklahoma Statutes and shall
8 dismiss without prejudice the criminal proceeding. If the person is
9 subsequently committed to the Department, the statute of limitations
10 for the criminal charges that were dismissed by the court shall be
11 tolled until the person is discharged from the Department pursuant
12 to Section 7-101 of Title 43A of the Oklahoma Statutes.

13 B. The Department of Mental Health and Substance Abuse Services
14 or designee shall make periodic reports to the court as to the
15 competency of the defendant.

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

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

23 2. If the person is found to continue to be incompetent because
24 the person is a person requiring treatment as defined in Title 43A

1 of the Oklahoma Statutes, the person shall be returned to the
2 custody of the Department of Mental Health and Substance Abuse
3 Services or designee;

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

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

15 5. If the person is found to be incompetent for reasons other
16 than the person is a person requiring treatment as defined by Title
17 43A of the Oklahoma Statutes, and other than the person is
18 intellectually disabled as defined in Title 10 of the Oklahoma
19 Statutes, but is also found to be dangerous as defined by Section
20 1175.1 of this title, the court shall issue the appropriate order as
21 set forth in Section 1175.6c of this title.

22 D. If the person is found to be incompetent because the person
23 is a person requiring treatment as defined by Section 1-103 of Title
24 43A of the Oklahoma Statutes, but not capable of achieving

1 competence with treatment within a reasonable period of time as
2 defined by Section 1175.1 of this title, the court shall commence
3 civil commitment proceedings pursuant to Title 43A and shall dismiss
4 without prejudice the criminal proceeding. If the person is
5 subsequently committed to the Department of Mental Health and
6 Substance Abuse Services pursuant to Title 43A, the statute of
7 limitations for the criminal charges which were dismissed by the
8 court shall be tolled until the person is discharged from the
9 Department of Mental Health and Substance Abuse Services pursuant to
10 Section 7-101 of Title 43A of the Oklahoma Statutes.

11 SECTION 5. AMENDATORY 22 O.S. 2021, Section 1175.6b, is
12 amended to read as follows:

13 Section 1175.6b. A. If the person is found to be incompetent
14 primarily because the person is intellectually disabled as defined
15 in Section 1408 of Title 10 of the Oklahoma Statutes, and is also
16 found by the court to be dangerous as defined by Section 1175.1 of
17 this title, the court shall suspend the criminal proceedings, and
18 shall place the person into the custody of the Office of Public
19 Guardian. The Office of Public Guardian shall act with all powers
20 set forth in the Oklahoma Public Guardianship Act, and:

21 1. The Office of Public Guardian shall place any person placed
22 in its custody under this title in a facility or residential
23 setting, private or public, willing to accept the individual and
24

1 that has a level of supervision and security that is appropriate to
2 the needs of the person;

3 2. Such placements shall be within the sole discretion of the
4 Office of Public Guardian;

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

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

16 5. If the person is determined by the Office of Public Guardian
17 to have regained competency or that conditional release to a private
18 guardian or other caretaker is appropriate, a hearing shall be
19 scheduled within twenty (20) days. If found competent by the court
20 or a jury after such rehearing, criminal proceedings shall be
21 resumed. If the court finds conditional release to be appropriate,
22 the court shall make an appropriate order for conditional release;
23 and
24

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

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

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

- 19 a. to be eligible for conditional release, the person
20 shall agree, in writing, that during the period the
21 person is granted conditional release and is subject
22 to the provisions thereof, there shall be free
23 transmission of all pertinent information, including
24 clinical information regarding the person, among the

1 person's treatment providers, the appropriate district
2 attorneys, law enforcement and court personnel. To
3 effect this agreement, the person shall execute any
4 releases required by law to allow for the
5 dissemination of this information,

6 b. the court's order placing the person on conditional
7 release shall include notice that the person's
8 conditional release may be revoked upon good cause,

9 c. the district attorney, as well as any agency or
10 individual involved in providing services with regard
11 to the person's conditional release, may prepare and
12 file an affidavit under oath if the district attorney,
13 agency, or individual believes that the person has
14 failed to comply with the conditions of release. The
15 court shall then conduct a hearing to determine if the
16 person has violated the conditions of release. Notice
17 of the hearing shall be issued, at least twenty-four
18 (24) hours before the hearing, to the Department of
19 Human Services, the person, trial counsel for the
20 person, and the client advocate general of the
21 Department of Human Services. After reviewing the
22 evidence concerning any alleged violation of the
23 conditions of the release, the person's progress,
24 treatment alternatives, and the need for public

1 safety, the court may order no change to the
2 conditions for the person's release or modify the
3 conditions of release, and

- 4 d. the person placed on conditional release shall remain
5 in a conditional release status until the reviewing
6 court issues a full release from all conditions.

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

- 10 a. if found competent by the court or a jury after such
11 rehearing, criminal proceedings shall be immediately
12 resumed by setting a competency hearing within thirty
13 (30) business days,

- 14 b. if the person is found to continue to be incompetent,
15 the person shall be returned to either conditional
16 release or referred to the Department of Human
17 Services for consideration of voluntary assistance.

18 SECTION 6. AMENDATORY 22 O.S. 2021, Section 1175.8, is
19 amended to read as follows:

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

1 been achieved, the criminal proceedings shall be immediately resumed
2 by setting a competency hearing within thirty (30) business days.

3 SECTION 7. This act shall become effective November 1, 2023.
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