

1 **SENATE FLOOR VERSION**

February 27, 2024

2 **AS AMENDED**

3 SENATE BILL NO. 771

By: Howard of the Senate

4 and

5 Lawson of the House

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

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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;

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 not to exceed
11 the lesser of:

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

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

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

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

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

7 C. If the court finds there is no doubt as to the competency of
8 the person, it shall order the criminal proceedings to resume.

9 D. 1. a. If the court finds there is a doubt as to the
10 competency of the person, it shall order the person to
11 be examined by the Department of Mental Health and
12 Substance Abuse Services or by a qualified forensic
13 examiner designated by the Department to perform
14 competency examinations.

15 b. In addition, the Developmental Disabilities Services
16 Division and the Office of Public Guardian of the
17 Department of Human Services shall receive written
18 notice from the district attorney who filed the
19 criminal petition, and be authorized by order of the
20 court to have a psychologist or other appropriate
21 clinician participate with professionals assigned by
22 any other public or private agency in any competency
23 evaluation ~~wherein~~ where developmental or intellectual
24 disability may be involved. The psychologist or

1 clinician employed, by contract or otherwise, by the
2 Department of Human Services may issue a separate
3 opinion and recommendation to the court. In such
4 cases where intellectual disability may be involved,
5 the Office of Public Guardian shall have standing to
6 participate in any stage of the proceedings as deemed
7 necessary by the Office.

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

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

1 the qualified forensic ~~examiner(s)~~ examiner or examiners to reach a
2 conclusion as to competency, and the court shall impose a reasonable
3 time limitation for such period of examination.

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

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

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

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

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

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

21 6. If the ~~answers to questions~~ requirements of paragraphs 4 and
22 5 of this subsection are ~~ne~~ not established, ~~why~~ the reasoning for
23 which the defendant is otherwise incompetent; and

24

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

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

14 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1175.4, is
15 amended to read as follows:

16 Section 1175.4. A. A hearing to determine the competency of
17 the person whose competency is in question shall be held within
18 thirty (30) days after the qualified forensic ~~examiner(s)~~ examiner
19 or examiners have made the determination required in Section 1175.3
20 of this title. In such cases where intellectual disability may be
21 involved, the Office of Public Guardian shall have standing to
22 participate in any stage of the proceedings as deemed necessary by
23 the Office.

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

1 in question. The jurors shall receive fees for attendance and
2 mileage as are allowed by law.

3 C. The person whose competency is in question shall have the
4 right to be present at the hearing on the petition unless it is made
5 to appear to the court that the presence of the person makes it
6 impossible to conduct the hearing in a reasonable manner. The court
7 may not decide in advance of the hearing, solely on the basis of the
8 certificate of the examining doctor or doctors, that the person
9 whose competency is in question should not be allowed to appear. It
10 shall be made to appear to the court based on clear and convincing
11 evidence that alternatives to exclusion were attempted before the
12 court renders the person's removal for that purpose or the person's
13 appearance at such hearing improper and unsafe.

14 D. All witnesses shall be subject to cross-examination in the
15 same manner as is provided by law. If so stipulated by counsel for
16 a person whose competency is in question, the district attorney and
17 the court, testimony may be given by telephone or other electronic
18 transmitting device approved by the court. No statement, admission
19 or confession made by the person whose competency is in question
20 obtained during the examination for competency may be used for any
21 purpose except for proceedings under ~~this act~~ Section 1175.1 et seq.
22 of this title. No such statement, admission or confession may be
23 used against such person in any criminal action whether pending at
24

1 the time the hearing is held or filed against such person at any
2 later time, directly, indirectly or in any manner or form.

3 E. If the question of competency is submitted to a jury, the
4 court shall instruct the jury as to the law regarding competency,
5 and the findings they are to make. If the trial of the question is
6 to the court, the court shall make the required findings.

7 SECTION 4. AMENDATORY 22 O.S. 2021, Section 1175.6b, is
8 amended to read as follows:

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

17 1. The Office of Public Guardian shall place any person placed
18 in its custody under this title in a facility or residential
19 setting, private or public, willing to accept the individual and
20 that has a level of supervision and security that is appropriate to
21 the needs of the person;

22 2. Such placements shall be within the sole discretion of the
23 Office of Public Guardian;

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

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

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

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

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

1 Section 1-103 of Title 43A of the Oklahoma Statutes and is found to
2 be not dangerous as defined by Section 1175.1 of this title, the
3 court shall suspend the criminal proceedings and either refer the
4 person to the Department of Human Services for consideration of
5 voluntary assistance or conditionally release the person as set
6 forth in this section.

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

14 a. to be eligible for conditional release, the person
15 shall agree, in writing, that during the period the
16 person is granted conditional release and is subject
17 to the provisions thereof, there shall be free
18 transmission of all pertinent information, including
19 clinical information regarding the person, among the
20 person's treatment providers, the appropriate district
21 attorneys, law enforcement and court personnel. To
22 effect this agreement, the person shall execute any
23 releases required by law to allow for the
24 dissemination of this information,

1 b. the court's order placing the person on conditional
2 release shall include notice that the person's
3 conditional release may be revoked upon good cause,
4 c. the district attorney, as well as any agency or
5 individual involved in providing services with regard
6 to the person's conditional release, may prepare and
7 file an affidavit under oath if the district attorney,
8 agency, or individual believes that the person has
9 failed to comply with the conditions of release. The
10 court shall then conduct a hearing to determine if the
11 person has violated the conditions of release. Notice
12 of the hearing shall be issued, at least twenty-four
13 (24) hours before the hearing, to the Department of
14 Human Services, the person, trial counsel for the
15 person, and the client advocate general of the
16 Department of Human Services. After reviewing the
17 evidence concerning any alleged violation of the
18 conditions of the release, the person's progress,
19 treatment alternatives, and the need for public
20 safety, the court may order no change to the
21 conditions for the person's release or modify the
22 conditions of release, and

1 d. the person placed on conditional release shall remain
2 in a conditional release status until the reviewing
3 court issues a full release from all conditions.

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

7 a. if found competent by the court or a jury after such
8 rehearing, criminal proceedings shall be resumed,

9 b. if the person is found to continue to be incompetent,
10 the person shall be returned to either conditional
11 release or referred to the Department of Human
12 Services for consideration of voluntary assistance.

13 C. The Office of Public Guardian shall have standing to
14 participate in any proceeding held pursuant to this section as
15 deemed necessary by the Office.

16 SECTION 5. This act shall become effective November 1, **2024**.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
18 February 27, 2024 - DO PASS AS AMENDED
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