

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1601

By: Cain

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 1175.1, as amended by Section 1, Chapter 207, O.S.L. 1992, 1175.2, 1175.3, as last amended by Section 5, Chapter 407, O.S.L. 1997, 1175.4, as last amended by Section 2, Chapter 161, O.S.L. 1996, 1175.5, 1175.6, as amended by Section 6, Chapter 407, O.S.L. 1997, and 1175.7, as amended by Section 7, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Sections 1175.1, 1175.3, 1175.4, 1175.6 and 1175.7), which relate to determination of competency procedure; modifying definition; making references gender neutral; modifying who may raise question of incompetency; providing for examination by qualified forensic examiners; providing for outpatient examination to be conducted in specified locales; providing for committing of person to the custody of specified entities; providing for notification of court under certain circumstances; providing for payment of costs of maintaining specified person in certain facility; providing time frame for hearing to determine competency; requiring determination to include consideration of specified report; allowing testimony by certain transmission under certain circumstances; clarifying language; modifying provisions related to disposition orders and placement in maximum security mental ward; limiting conditions under which a person may be committed; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1175.1, as amended by Section 1, Chapter 207, O.S.L. 1992 (22 O.S. Supp. 1999, Section 1175.1), is amended to read as follows:

Section 1175.1 As used in this act:

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. "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. "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; and

4. "~~Doctor~~ Qualified forensic examiner" means any ~~physician,~~ psychiatrist, psychologist or ~~equivalent expert~~ other mental health professional whose training and experience enable them to form expert opinions regarding mental illness, competency, dangerousness and criminal responsibility.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1175.2, is amended to read as follows:

Section 1175.2 A. No person shall be subject to any criminal procedures after ~~he~~ the person is determined to be incompetent except as provided in Sections 1175.1 through 1175.8 of this title. The question of the incompetency of a person may be raised by the person, the ~~defense~~ attorney for the person whose competency is in question, or the district attorney, by an application for determination of competency. The application for determination of competency shall allege that the person is incompetent to undergo further proceedings, and shall state facts sufficient to raise a doubt as to the competency of the person. The court, at any time, may initiate a competency determination on its own motion, without an application, if the court has a doubt as to the competency of the person.

If the court so initiates such an application, it may appoint the district attorney for the purpose of proceeding with the application. If the district attorney opposes the application of the court, and by reason of a conflict of interest could not

represent the court as applicant, then the court shall appoint private counsel. Said private counsel shall be reasonably compensated by the court fund.

B. A copy of the application for determination of competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a competency determination. The notice shall contain the following information:

1. The definition provided by Section 1175.1 of this title of competency and incompetency;

2. That, upon request, the hearing on the application may be conducted as a jury trial as provided in Section 1175.4 of this title;

3. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the petition and that the defendant may not be called to testify against his will, unless the application is initiated by the defendant;

4. That if the person whose competency is in question does not have an attorney, the court will appoint an attorney for the person who shall represent ~~him~~ the person until final disposition of the case;

5. That if the person whose competency is in question is indigent or poor, the court will pay the attorney fees; and

6. That the person whose competency is in question shall be afforded such other rights as are guaranteed by state and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person whose competency is in question, upon ~~his~~ the person's father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the county, and upon any of said relatives residing outside of the county, and within the state, as may be ordered by the court, and also upon the person with

whom the person whose competency is in question may reside, or at whose house ~~he~~ the person may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of this state.

C. Any criminal proceedings against a person whose competency is in question shall be suspended pending the determination of the competency of the person.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1175.3, as last amended by Section 5, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Section 1175.3), is amended to read as follows:

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

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

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

D. 1. a. If the court finds there is a doubt as to the competency of the person, it shall order the person to be examined by ~~doctors or appropriate technicians.~~ ~~The doctors or technicians shall be practitioners in the appropriate branch of medicine relevant to the alleged incompetency of the person~~ qualified forensic examiners.

b. In addition, the Developmental Disabilities Services Division of the Department of Human Services shall

receive written notice from the district attorney who filed the criminal petition, and be authorized by order of the court to have a psychologist or other appropriate clinician participate with professionals assigned by any other public or private agency in any competency evaluation wherein mental retardation or other developmental disability may be involved. The psychologist or clinician employed, by contract or otherwise, by the Department of Human Services may issue a separate opinion and recommendation to the court.

2. The person shall be examined by a qualified forensic examiner on an outpatient basis prior to referral for any necessary inpatient evaluation, as ordered by the court. ~~The court may commit the person to the custody of the Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the doctor or doctors or technicians to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination~~ The outpatient examination may be conducted in the community, the jail or detention facility where the person is held.

3. If the court determines that the person whose competency is in question may be a threat to the safety of self or others, it shall order the person retained in a secure facility until the completion of the competency hearing provided in Section 1175.4 of this title. If the court determines the person may be a threat to the safety of self or others because the individual is a person requiring treatment as defined in Title 43A of the Oklahoma Statutes, it may commit the person to the custody of the Department of Mental Health and Substance Abuse Services or any other state

agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the qualified forensic examiner(s) to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination.

E. ~~The doctor or doctors~~ qualified forensic examiner(s) shall receive instructions that they shall examine the patient to determine:

1. If the person is able to appreciate the nature of the charges made against such person;
2. If the person is able to consult with the lawyer and rationally assist in the preparation of the defense of such person;
3. If the answer to question 1 or 2 is no, whether the person can attain competency within a reasonable time if provided with a course of treatment, therapy or training;
4. If the person is ~~mentally ill or~~ a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes; and
5. If the person were released without treatment, therapy or training, whether such person would presently pose a significant threat to the life or safety of self or others.

F. Upon completion of the competency evaluation, the Department of Mental Health and Substance Abuse Services shall notify the court of its findings and the person shall be returned to the court in the customary manner within five (5) business days. If the person is not returned within that time, the county in which the proceedings are to be held shall pay the costs of maintaining the person at the institution or facility for the period of time the person remains at the institution or facility in excess of the five-day period.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1175.4, as last amended by Section 2, Chapter 161, O.S.L. 1996 (22 O.S. Supp. 1999, Section 1175.4), is amended to read as follows:

Section 1175.4 A. ~~After~~ A hearing to determine the competency of the person shall be held within thirty (30) days after the doctor, doctors or technicians qualified forensic examiner(s) have made the determination required in Section 1175.3 of this title, ~~a hearing on the competency of the person shall be held only upon application of the defendant or the state or upon the formal setting of a competency hearing by the court.~~

B. The court, at the hearing ~~on the application~~, shall determine, by a preponderance of the evidence, if the person is incompetent. Such determination shall include consideration of the qualified forensic examiner(s)' report. The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence. If the court deems it necessary, or if the person alleged to be a person requiring treatment, or any relative, friend, or any person with whom he may reside, or at whose house ~~he~~ the person may be, shall so demand, the court shall schedule the hearing on the application as a jury trial to be held within seventy-two (72) hours of the request, excluding weekends and legal holidays, or within as much additional time as is requested by the attorney of the person whose competency is in question, upon good cause shown. The jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record, summoned to determine the questions of the person's competency and need for treatment. Whenever a jury is required, the court shall proceed to the selection of such jury in the manner as provided by law and such jury shall determine the questions of the competency and need for treatment of the person whose competency is in question. The jurors shall receive fees for attendance and mileage as are allowed by law.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the court that the presence of the person makes it

impossible to conduct the hearing in a reasonable manner. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining doctor or doctors, that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the court based on clear and convincing evidence that alternatives to exclusion were attempted before the court renders ~~his~~ the person's removal for that purpose or ~~his~~ the person's appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. If so stipulated by counsel for a person whose competency is in question, the district attorney and the court, testimony may be given by telephone or other electronic transmitting device approved by the court. No statement, admission or confession made by the person whose competency is in question obtained during ~~his~~ the examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form.

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

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1175.5, is amended to read as follows:

Section 1175.5 The jury or the court, as the case may be, shall answer the following questions in determining the disposition of the person whose competency is in question:

1. Is the person incompetent to undergo further criminal proceedings at this time? If the answer is no, criminal proceedings



shall be resumed. If the answer is yes, the following question shall be answered.

2. Can the incompetency of the person be corrected within a reasonable period of time, as defined by the court, by treatment, therapy or training? If the answer is yes, the court shall make the appropriate order. If the answer is no, the following questions shall be answered.

3. Is the person ~~mentally ill~~, mentally retarded or a person requiring treatment as defined by Section 3 of Title 43A of the Oklahoma Statutes?

4. Is the person presently a threat to the safety of ~~himself~~ self or others if released?

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1175.6, as amended by Section 6, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Section 1175.6), is amended to read as follows:

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

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the court shall commit the person to the legal custody of the Department of Mental Health and Substance Abuse Services, but only where the person is incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or refer to the Department of Human Services, other appropriate state agencies or a private care provider for consideration of voluntary appropriate treatment, therapy, or training;

3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, ~~and is~~ because the person is a person requiring treatment as defined by

Title 43A of the Oklahoma Statutes, then the court shall order treatment as if there had been a finding pursuant to Title 43A of the Oklahoma Statutes that the defendant ~~was~~ is a ~~mentally ill~~ person requiring treatment, without any further proceedings, and shall suspend the criminal proceeding. ~~The~~ In such circumstances the Department of Mental Health and Substance Abuse Services or other agency or private care provider providing treatment to the person or the institution wherein the person is confined or treated shall make periodic reports to the court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency or is no longer incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, the court shall hold another competency hearing to determine if the person has achieved competency, or is no longer incompetent because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes. The competency hearing shall be held within twenty (20) days of receipt of the report. If the person is found to continue to be incompetent for reasons other than that the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, the court shall refer the person to the Department of Human Services, in the manner provided for in subsection 4 of this section. If competency has been achieved, the criminal proceeding shall be resumed; and

4. a. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, ~~but is not~~ for reasons other than that the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes ~~and is not a threat to self or society,~~ the court shall refer the person to the Department of Human Services for consideration of voluntary assistance, subject to

assistance from any other appropriate state agencies, and shall suspend the criminal proceedings.

- b. The If pursuant to this statute, the person is referred to the Department of Human Services, the Department of Human Services shall make periodic reports to the court as to the status and activities of the person. If the Department of Human Services reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. The competency hearing shall be held within twenty (20) days of receipt of the report. If competency has been achieved, the criminal proceeding shall be resumed.

B. Any person arrested and charged with a criminal offense which is punishable by death, life imprisonment or life imprisonment without parole, who is found to be incompetent by the court because the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes and ordered into the custody of the Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection A of this section, shall be placed in a ~~maximum security~~ secure ward of the mental health facility designated by the Department of Mental Health and Substance Abuse Services until such time as such person is adjudicated to be competent; adjudicated to no longer be incompetent as a result of being a person requiring treatment as defined by Title 43A of the Oklahoma Statutes; or is adjudicated to no longer ~~determined to~~ be a threat to any other person.

C. In no event shall a person found to be incompetent and not capable of achieving competency within a reasonable period of time be treated confined pursuant to this section for a period of time exceeding the lesser of:

1. The maximum sentence specified for the most serious criminal offense for which the person is charged, or

2. A maximum period of three (3) years if the person is charged with a felony which is not punishable by death, life imprisonment or life imprisonment without parole, or ten (10) years for a criminal offense which is punishable by death, life imprisonment or life imprisonment without parole;

provided, however, upon discharge, the court may, upon its own motion or upon a petition by the district attorney, commence civil involuntary commitment proceedings against the person pursuant to Title 43A of the Oklahoma Statutes.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 1175.7, as amended by Section 7, Chapter 407, O.S.L. 1997 (22 O.S. Supp. 1999, Section 1175.7), is amended to read as follows:

Section 1175.7 A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. ~~The~~ If the person is not committed to the custody of the Oklahoma Department of Mental Health and Substance Abuse Services, the court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the court and the type of disability sought to be corrected by the court's order. The court ~~may~~ shall require the supervisor to provide periodic progress reports to the court and may pay for the services of the medical supervisor from court funds.

C. The court may commit the incompetent person to the custody of the Department of Mental Health and Substance Abuse Services, but

only where the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, or other appropriate state agency, if the court, after the hearing provided in Section 1175.4 of this title, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the court determines that the defendant is dangerous to self or society as a result of being a person requiring treatment as defined by Title 43A of the Oklahoma Statutes.

D. The court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the state nor the court fund is required to directly pay for such care.

E. In no event shall an incompetent individual be involuntarily committed to the legal custody of the Department of Human Services or any of its facilities.

SECTION 8. This act shall become effective November 1, 2000.

47-2-2850

CJ

6/12/2015 1:44:55 AM