

SB 818

THE STATE SENATE  
Tuesday, February 25, 2003

Senate Bill No. 818  
As Amended

SENATE BILL NO. 818 - By: WILKERSON of the Senate and ASKINS of the House.

[ criminal procedure - determination of mental competency - custody of the Department of Human Services - effective date - emergency ]

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1175.1, is amended to read as follows:

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

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

1 limited to, interrogation, lineup, preliminary hearing, motion  
2 dockets, discovery, pretrial hearings and trial; ~~and~~

- 3 4. "Qualified forensic examiner" means any:
- 4 a. psychiatrist with forensic training and experience,
  - 5 b. psychologist with forensic training and experience, or
  - 6 c. ~~either~~ a licensed mental health professional whose  
7 forensic training and experience enable them to form  
8 expert opinions regarding mental illness, competency  
9 and dangerousness and who have been approved to render  
10 such opinions by the court; and

11 5. "Reasonable period of time" means not exceeding the lesser  
12 of:

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

16 SECTION 2. AMENDATORY 22 O.S. 2001, 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

1 of competency to determine if it alleges facts sufficient to raise a  
2 doubt as to the competency of the person. Any additional evidence  
3 tending to create a doubt as to the competency of the person may be  
4 presented at this hearing.

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

7 D. 1. a. If the court finds there is a doubt as to the  
8 competency of the person, it shall order the person to  
9 be examined by qualified forensic examiners.

10 b. In addition, the Developmental Disabilities Services  
11 Division of the Department of Human Services shall  
12 receive written notice from the district attorney who  
13 filed the criminal petition, and be authorized by  
14 order of the court to have a psychologist or other  
15 appropriate clinician participate with professionals  
16 assigned by any other public or private agency in any  
17 competency evaluation wherein mental retardation or  
18 other developmental disability may be involved. The  
19 psychologist or clinician employed, by contract or  
20 otherwise, by the Department of Human Services may  
21 issue a separate opinion and recommendation to the  
22 court.

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

6           3. If the court determines that the person whose competency is  
7 in question may ~~be a threat~~ pose a danger to the safety of self or  
8 others, it shall order the person retained in a secure facility  
9 until the completion of the competency hearing provided in Section  
10 1175.4 of this title. If the court determines the person may ~~be a~~  
11 ~~threat~~ pose a danger to the safety of self or others because the  
12 individual is a person requiring treatment as defined in Title 43A  
13 of the Oklahoma Statutes, it may commit the person to the custody of  
14 the Department of Mental Health and Substance Abuse Services or any  
15 other state agency or private facility for the examination required  
16 by subsection D of this section. The person shall be required to  
17 undergo examination for a period of time sufficient for the  
18 qualified forensic examiner(s) to reach a conclusion as to  
19 competency, and the court shall impose a reasonable time limitation  
20 for such period of examination.

21           E. The qualified forensic examiner(s) shall receive  
22 instructions that they shall examine the patient to determine:

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

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

5           3. If the ~~answer to question 1 or 2 is no~~ person is unable to  
6 appreciate the nature of the charge or to consult and rationally  
7 assist in the preparation of the defense, whether the person can  
8 attain competency within a reasonable period of time as provided by  
9 Section 1175.1 of this title if provided with a course of treatment,  
10 therapy or training;

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

13           5. If the person were released ~~without treatment, therapy or~~  
14 ~~training~~, whether such person would presently pose a ~~significant~~  
15 ~~threat~~ danger to the life or safety of self or others.

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

1 SECTION 3. AMENDATORY 22 O.S. 2001, Section 1175.5, is  
2 amended to read as follows:

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

6 1. Is the person incompetent to undergo further criminal  
7 proceedings at this time? If the answer is no, criminal proceedings  
8 shall be resumed. If the answer is yes, the following question  
9 shall be answered.

10 2. Can the incompetency of the person be corrected within a  
11 reasonable period of time, as defined by ~~the court~~ Section 1175.1 of  
12 this title, by treatment, therapy or training? If the answer is  
13 yes, the court shall make the appropriate order. If the answer is  
14 no, the following questions shall be answered.

15 3. Is the person mentally retarded or ~~a person requiring~~  
16 ~~treatment as defined by Section 1-103 of Title 43A of the Oklahoma~~  
17 ~~Statutes~~ developmentally disabled as defined by Section 1408 of  
18 Title 10 of the Oklahoma Statutes?

19 4. Is the person a person requiring treatment as defined by  
20 Section 1-103 of Title 43A of the Oklahoma Statutes?

21 5. Does the person presently pose a threat danger to the safety  
22 of self or others if released?

1 SECTION 4. AMENDATORY 22 O.S. 2001, Section 1175.6, is  
2 amended to read as follows:

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

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

8 2. If the person is found to be incompetent, but capable of  
9 achieving competence with treatment, therapy, or training within a  
10 reasonable period of time as defined by Section 1175.1 of this  
11 title, the court shall commit the person to the legal custody of the  
12 Department of Mental Health and Substance Abuse Services, but only  
13 ~~where~~ if the person is incompetent because the person is a person  
14 requiring treatment as defined by Title 43A of the Oklahoma  
15 Statutes, ~~or refer to~~. If the person is found to be incompetent,  
16 but capable of achieving competence with treatment, therapy or  
17 training within a reasonable period of time as defined by Section  
18 1175.1 of this title, but the person is incompetent for reasons  
19 other than the person is a person requiring treatment as defined by  
20 Title 43A of the Oklahoma Statutes, the court shall commit the  
21 person to the custody of the Department of Human Services, other  
22 appropriate state agencies or a private care provider for  
23 ~~consideration of voluntary~~ appropriate treatment, therapy, or

1 training. Unless otherwise specified by the court, a progress  
2 report shall be submitted to the committing court concerning such  
3 person's capacity or incapacity at least once every one hundred  
4 eighty (180) days as measured from the date of such person's  
5 delivery into the custody of the designated agency;

6 3. If the person is found to be incompetent ~~and~~ because the  
7 person is a person requiring treatment as defined by Title 43A of  
8 the Oklahoma Statutes, but is found not capable of achieving  
9 ~~competency within a reasonable period of time because the person is~~  
10 ~~a person requiring treatment as defined by Title 43A of the Oklahoma~~  
11 ~~Statutes~~ as defined by Section 1175.1 of this title, then the court  
12 shall ~~order treatment as if there had been a finding pursuant to~~  
13 ~~Title 43A of the Oklahoma Statutes that the defendant is a person~~  
14 ~~requiring treatment, without any further proceedings~~ commence civil  
15 commitment proceedings pursuant to Title 43A of the Oklahoma  
16 Statutes, and ~~shall suspend~~ dismiss with or without prejudice the  
17 criminal proceeding. ~~In such circumstances the Department of Mental~~  
18 ~~Health and Substance Abuse Services or other agency or private care~~  
19 ~~provider providing treatment to the person or the institution~~  
20 ~~wherein the person is confined or treated shall make periodic~~  
21 ~~reports to the court as to the competency of the defendant. If the~~  
22 ~~agency or institution reports that the person appears to have~~  
23 ~~achieved competency or is no longer incompetent because the person~~

1 ~~is a person requiring treatment as defined by Title 43A of the~~  
2 ~~Oklahoma Statutes, the court shall hold another competency hearing~~  
3 ~~to determine if the person has achieved competency, or is no longer~~  
4 ~~incompetent because the person is a person requiring treatment as~~  
5 ~~defined by Title 43A of the Oklahoma Statutes. The competency~~  
6 ~~hearing shall be held within twenty (20) days of receipt of the~~  
7 ~~report. If the person is found to continue to be incompetent for~~  
8 ~~reasons other than that the person is a person requiring treatment~~  
9 ~~as defined by Title 43A of the Oklahoma Statutes, the court shall~~  
10 ~~refer the person to the Department of Human Services, in the manner~~  
11 ~~provided for in paragraph 4 subsection A of this section. If~~  
12 ~~competency has been achieved, the criminal proceeding shall be~~  
13 ~~resumed~~ If the individual is subsequently committed to the  
14 Department of Mental Health and Substance Abuse Services pursuant to  
15 Title 43A of the Oklahoma Statutes, the statute of limitations for  
16 the criminal charges which were dismissed by the court shall be  
17 tolled until the person is discharged from the Department of Mental  
18 Health and Substance Abuse Services; and

19 4. a. If the person is found to be incompetent, ~~and~~ for  
20 reasons other than the person is a person requiring  
21 treatment as defined by Title 43A of the Oklahoma  
22 Statutes, but is not capable of achieving competency  
23 within a reasonable period of time ~~for reasons other~~

1 ~~than that the person is a person requiring treatment~~  
2 ~~as defined by Title 43A of the Oklahoma Statutes, the~~  
3 court shall ~~refer~~ commit the person to the legal  
4 custody of the Department of Human Services ~~for~~  
5 ~~consideration of voluntary assistance, subject to~~  
6 ~~assistance from any other appropriate state agencies,~~  
7 and shall ~~suspend~~ dismiss with or without prejudice  
8 the criminal proceedings.

9 ~~b. If pursuant to this statute, the person is referred to~~  
10 ~~the Department of Human Services, the Department of~~  
11 ~~Human Services shall make periodic reports to the~~  
12 ~~court as to the status and activities of the person.~~  
13 ~~If the Department of Human Services reports that the~~  
14 ~~person appears to have achieved competency, the court~~  
15 ~~shall hold another competency hearing to determine if~~  
16 ~~the person has achieved competency. The competency~~  
17 ~~hearing shall be held within twenty (20) days of~~  
18 ~~receipt of the report. If competency has been~~  
19 ~~achieved, the criminal proceeding shall be resumed.~~

20 B. Any person arrested and charged with a criminal offense  
21 which is punishable by death, life imprisonment or life imprisonment  
22 without parole, who is found to be incompetent by the court because  
23 the person is a person requiring treatment as defined by Title 43A

1 of the Oklahoma Statutes and ordered into the custody of the  
2 Department of Mental Health and Substance Abuse Services pursuant to  
3 paragraphs 2 or 3 of subsection A of this section, shall be placed  
4 in a secure ward of the mental health facility designated by the  
5 Department of Mental Health and Substance Abuse Services until such  
6 time as such person is adjudicated to:

7 1. Be competent;

8 2. No longer be incompetent as a result of being a person  
9 requiring treatment as defined by Title 43A of the Oklahoma  
10 Statutes; ~~or~~

11 3. No longer be a ~~threat~~ danger to self or any other person; or

12 4. Be found unable to attain competence in a reasonable period  
13 of time.

14 SECTION 5. AMENDATORY 22 O.S. 2001, Section 1175.7, is  
15 amended to read as follows:

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

21 B. If the person is not committed to the custody of the  
22 Department of Mental Health and Substance Abuse Services, the court  
23 shall appoint a medical supervisor for a course of treatment. The

1 medical supervisor of treatment may be any person or agency that  
2 agrees to supervise the course of treatment. The proposed treatment  
3 may be either inpatient or outpatient care depending on the  
4 facilities and resources available to the court and the type of  
5 disability sought to be corrected by the court's order. The court  
6 shall require the supervisor to provide periodic progress reports to  
7 the court and may pay for the services of the medical supervisor  
8 from court funds.

9 C. The court may commit the incompetent person to the custody  
10 of the Department of Mental Health and Substance Abuse Services, but  
11 only where the person is a person requiring treatment as defined by  
12 Title 43A of the Oklahoma Statutes, or other appropriate state  
13 agency, if the court, after the hearing provided in Section 1175.4  
14 of this title, determines that such commitment is necessary for the  
15 effective administration of the treatment ordered, or if the court  
16 determines that the defendant is dangerous to self or society as a  
17 result of being a person requiring treatment as defined by Title 43A  
18 of the Oklahoma Statutes.

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

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

4       SECTION 6.        AMENDATORY        22 O.S. 2001, Section 1175.8, is  
5 amended to read as follows:

6       Section 1175.8 If the medical supervisor reports that the  
7 person appears to have achieved competency after a finding of  
8 incompetency, the court shall hold another competency hearing to  
9 determine if the person has achieved competency. If competency has  
10 been achieved, the criminal proceedings shall be resumed. A person  
11 committed to a public institution pursuant to the provisions of this  
12 title who is subsequently sentenced for the crime charged at the  
13 time of commitment may be credited with all or any part of the time  
14 the person was confined in such public institution.

15       SECTION 7. This act shall become effective July 1, 2003.

16       SECTION 8. It being immediately necessary for the preservation  
17 of the public peace, health and safety, an emergency is hereby  
18 declared to exist, by reason whereof this act shall take effect and  
19 be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-19-03 - DO  
21 PASS, As Amended and Coauthored.