

1 ENGROSSED SENATE  
2 BILL NO. 619

By: Adelson of the Senate  
and  
Adkins of the House

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6  
7 [ juveniles - cross-examination - codification -  
8 effective date ]  
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10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 7301-2.1 of Title 10, unless  
13 there is created a duplication in numbering, reads as follows:

14 As used in Sections 1 through 11 of this act:

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

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

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1 3. "Dangerous" means a person who poses a substantial risk of  
2 harm to self or others as defined in subparagraph a or b of  
3 paragraph 18 of Section 1-103 of Title 43A of the Oklahoma Statutes;

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

8 5. "Juvenile" means a minor under the age of eighteen (18)  
9 years of age;

10 6. "Qualified juvenile forensic examiner" means any of the  
11 following who also meet the criteria set forth and required by the  
12 Commissioner of the Department of Mental Health and Substance Abuse  
13 Services:

14 a. psychiatrist with juvenile forensic training and  
15 experience,

16 b. psychologist with juvenile forensic training and  
17 experience, or

18 c. a licensed mental health professional whose juvenile  
19 forensic training and experience enable the licensed  
20 mental health professional to form expert opinions  
21 regarding mental illness, competency and dangerousness  
22 in juveniles and who has been approved to render such  
23 opinions by the court.

1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7301-2.2 of Title 10, unless  
3 there is created a duplication in numbering, reads as follows:

4           A. If, at any time in a delinquency proceeding and before the  
5 end of trial, the court finds that there is probable cause to  
6 believe that the juvenile lacks substantial capacity to understand  
7 the proceedings against the juvenile, or to assist the juvenile's  
8 attorney in the juvenile's own defense, the court shall order that a  
9 competency evaluation be performed by at least one licensed mental  
10 health professional as defined in Title 43A, who is qualified by  
11 training and experience in the forensic evaluation of juveniles.

12           B. The evaluation shall be performed on an outpatient basis  
13 unless the court specifically finds that the juvenile is currently  
14 hospitalized in a psychiatric hospital.

15           C. The court shall require the district attorney to provide to  
16 the evaluators appointed under subsection A any information relevant  
17 to the evaluation, including, but not limited to:

- 18           1. A copy of the warrant or petition;
- 19           2. The names and addresses of the district attorney, the  
20 attorney for the juvenile, and the judge ordering the evaluation;  
21 and
- 22           3. Information about the alleged offense.

23           The court shall require the attorney for the juvenile to provide  
24 to the evaluator only the psychiatric records, medical and

1 developmental information, and other information that is deemed  
2 relevant to the evaluation of competency. The moving party shall  
3 provide the evaluator a summary of the reasons for the evaluation  
4 request. All information required by this subsection shall be  
5 provided to the evaluator within four (4) days, excluding weekends  
6 and holidays, of the issuance of the court order requiring the  
7 evaluation and when applicable, shall be submitted prior to  
8 admission to the facility providing the inpatient evaluation.

9 D. Upon completion of the evaluation, the evaluator shall  
10 submit the report in writing to the court and the attorneys of  
11 record concerning:

12 1. The juvenile's capacity to understand the proceedings  
13 against the juvenile;

14 2. The juvenile's ability to assist the juvenile's attorney;  
15 and

16 3. A plan for treatment and competency restoration and need for  
17 services, including a description of the suggested necessary  
18 services and least restrictive setting to assist the juvenile in  
19 restoration to competency, placement suggestions, and suggested  
20 court review schedule, not to exceed ninety (90) days between each  
21 review.

22 No statements of the juvenile relating to the alleged offense  
23 shall be included in the report.

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1 E. After receiving the report described in subsection D, the  
2 court shall promptly determine whether the juvenile is competent to  
3 stand trial for adjudication or disposition. A hearing on the  
4 juvenile's competency is not required unless one is requested by the  
5 district attorney or the attorney for the juvenile or when otherwise  
6 required under state law. The juvenile shall have the right to  
7 notice of the hearing and the right to personally participate in and  
8 introduce evidence at the hearing. No statements or admissions by  
9 the juvenile in a competency hearing shall be admissible or used  
10 against the juvenile in any criminal or civil context, except for  
11 the determination of competency.

12 F. If the juvenile is otherwise able to understand the charges  
13 against the juvenile and assist in defense, a finding of  
14 incompetency shall not be made based solely on any or all of the  
15 following:

- 16 1. The juvenile's age or developmental factors;
- 17 2. The juvenile's claim to be unable to remember the time  
18 period surrounding the alleged offense; or
- 19 3. The fact that the juvenile is under the influence of  
20 medication.

21 SECTION 3. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 7301-2.3 of Title 10, unless  
23 there is created a duplication in numbering, reads as follows:

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1       A. No juvenile shall be subject to any criminal procedures  
2 after the juvenile is determined to be incompetent except as  
3 provided in Sections 1 through 11 of this act. The question of the  
4 incompetency of a juvenile may be raised by the attorney for the  
5 juvenile whose competency is in question, or the district attorney,  
6 by a motion for determination of competency. The motion for  
7 determination of competency shall allege that the juvenile is  
8 incompetent to undergo further proceedings, and shall state facts  
9 sufficient to raise a doubt as to the competency of the juvenile.  
10 The court, at any time, may initiate a competency determination on  
11 its own motion, without a motion, if the court has a doubt as to the  
12 competency of the juvenile.

13       If the court so initiates such a motion, it may appoint the  
14 district attorney for the purpose of proceeding with the motion. If  
15 the district attorney opposes the motion of the court and by reason  
16 of a conflict of interest could not represent the court as movant,  
17 then the court shall appoint private counsel. The private counsel  
18 shall be reasonably compensated by the court fund.

19       B. A copy of the motion for determination of competency and a  
20 notice, as hereinafter described, shall be served personally on the  
21 juvenile and the parent or legal guardian of the juvenile, at least  
22 one (1) day before the first hearing on the motion for a competency  
23 determination. The notice shall contain the following information:

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1           1. The definition provided by Section 1 of this act of  
2 competency and incompetency;

3           2. That, upon request, the hearing on the motion may be  
4 conducted as provided in Section 2 of this act;

5           3. That the petitioner and any witnesses identified in the  
6 application may offer testimony under oath at the hearings on the  
7 petition and that the juvenile may not be called to testify against  
8 the juvenile's will;

9           4. That if the juvenile whose competency is in question does  
10 not have an attorney, the court will appoint an attorney for the  
11 juvenile who shall represent the juvenile until final disposition of  
12 the case;

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

15           6. That the juvenile whose competency is in question shall be  
16 afforded such other rights as are guaranteed by state and federal  
17 law. The notice shall be served upon the juvenile whose competency  
18 is in question, upon the juvenile's parent or legal guardian, the  
19 juvenile's attorney, the district attorney, and also upon the person  
20 with whom the juvenile whose competency is in question may reside,  
21 or at whose house the juvenile may be, and any other person ordered  
22 to be served by the court. The person making such service shall  
23 make affidavit of the same and file such notice, with proof of  
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1 service, with the district court. This notice may be served in any  
2 part of this state.

3 C. Any criminal proceedings against a juvenile whose competency  
4 is in question shall be suspended pending the determination of the  
5 competency of the juvenile.

6 SECTION 4. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 7301-2.4 of Title 10, unless  
8 there is created a duplication in numbering, reads as follows:

9 A. Upon filing of a motion for determination of competency, the  
10 court shall set a hearing date, which shall be as soon as  
11 practicable, but at least one (1) day after service, and not more  
12 than thirty (30) days after service of notice as provided by Section  
13 3 of this act.

14 B. The court shall hold a hearing on the date provided. At the  
15 hearing, the court shall examine the motion for determination of  
16 competency to determine if it alleges facts sufficient to raise a  
17 doubt as to the competency of the juvenile. Any additional evidence  
18 tending to create a doubt as to the competency of the juvenile may  
19 be presented at this hearing.

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

22 D. 1. If the court finds there is a doubt as to the competency  
23 of the juvenile, it shall order the person to be examined by the  
24 Department of Mental Health and Substance Abuse Services.

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

6           3. If the court determines that the person whose competency is  
7 in question may be dangerous as defined in Section 1 of this act, it  
8 shall order the juvenile retained in a secure facility, not in  
9 conflict with Section 2 of this act, until the completion of the  
10 competency hearing provided in Section 2 of this act.

11          E. The qualified juvenile forensic examiner(s) shall receive  
12 instructions that they shall examine the juvenile to determine:

13           1. If the juvenile is able to appreciate the nature of the  
14 charges made against him or her;

15           2. If the juvenile is able to consult with the lawyer and  
16 rationally assist in the preparation of the defense of the juvenile;

17           3. If the juvenile is unable to appreciate the nature of the  
18 charges or to consult and rationally assist in the preparation of  
19 the defense, whether the juvenile can attain competency within a  
20 reasonable period of time as defined in Section 1 of this act if  
21 provided with a course of treatment, therapy or training;

22           4. If the juvenile is incompetent due to a mental illness as  
23 defined by Title 43A of the Oklahoma Statutes;

1           5. If the juvenile were released, whether the juvenile would  
2 presently be dangerous as defined in Section 1 of this act; and

3           6. If the juvenile's age or other developmental factors are the  
4 basis for incompetency.

5           F. Upon completion of the competency evaluation, the Department  
6 of Mental Health and Substance Abuse Services shall notify the court  
7 of its individual findings on the juvenile in compliance with  
8 Section 2 of this act.

9           SECTION 5.       NEW LAW       A new section of law to be codified  
10 in the Oklahoma Statutes as Section 7301-2.5 of Title 10, unless  
11 there is created a duplication in numbering, reads as follows:

12           A. A hearing to determine the competency of the juvenile whose  
13 competency is in question shall be held within thirty (30) days  
14 after the qualified juvenile forensic examiner or examiners have  
15 made the determination required in Section 4 of this act.

16           B. The court, at the hearing, shall determine by a  
17 preponderance of the evidence if the juvenile is incompetent. Such  
18 determination shall include consideration of all reports prepared by  
19 the qualified juvenile forensic examiner or examiners. The juvenile  
20 shall be presumed to be competent for the purposes of the allocation  
21 of the burden of proof and burden of going forward with the  
22 evidence.

23           C. The juvenile whose competency is in question shall have the  
24 right to be present at the hearing on the petition unless the court

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

10 D. All witnesses shall be subject to cross-examination in the  
11 same manner as is provided by law. If so stipulated by counsel for  
12 a juvenile whose competency is in question, the district attorney  
13 and the court, testimony may be given by telephone or other  
14 electronic transmitting device approved by the court. No statement,  
15 admission or confession made by the juvenile whose competency is in  
16 question obtained during the examination for competency may be used  
17 for any purpose except for proceedings under this section. No such  
18 statement, admission or confession may be used against such juvenile  
19 in any criminal or civil action whether pending at the time the  
20 hearing is held or filed against such juvenile at any later time,  
21 directly, indirectly or in any manner or form

22 E. The court shall make the required findings listed in Section  
23 6 of this act.

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1           SECTION 6.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7301-2.6 of Title 10, unless  
3 there is created a duplication in numbering, reads as follows:

4           The court shall answer the following questions in determining  
5 the disposition of the juvenile whose competency is in question.

6           1. Is the juvenile 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 questions  
9 must be answered.

10           a. is the juvenile able to appreciate the nature of the  
11 charges made against the juvenile,

12           b. is the juvenile able to consult with the lawyer and  
13 rationally assist in the preparation of the defense of  
14 the juvenile,

15           c. can the incompetency of the juvenile be corrected  
16 within a reasonable period of time, as defined by  
17 Section 1 of this act, through treatment, therapy or  
18 training,

19           d. is the juvenile incompetent due to a mental illness as  
20 defined in Title 43A of the Oklahoma Statutes,

21           e. is the juvenile's age or other developmental factors  
22 the basis for incompetency,

23           f. is the juvenile presently dangerous as defined in  
24 Section 1 of this act if released.

1           SECTION 7.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7301-2.7 of Title 10, unless  
3 there is created a duplication in numbering, reads as follows:

4           A. Upon the finding by the court as provided by Section 6 of  
5 this act, the court shall issue the appropriate order regarding the  
6 juvenile as follows:

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

9           2. If the juvenile is found to be incompetent because the  
10 juvenile has a mental illness as defined in Title 43A of the  
11 Oklahoma Statutes, the court shall issue the appropriate order as set  
12 forth in this act; and

13           3. If the juvenile is found to be incompetent for reasons other  
14 than the juvenile has a severe mental illness as defined in Title  
15 43A of the Oklahoma Statutes, the court may not commit the juvenile  
16 into the custody of the Department of Mental Health and Substance  
17 Abuse Services.

18           SECTION 8.           NEW LAW           A new section of law to be codified  
19 in the Oklahoma Statutes as Section 7301-2.8 of Title 10, unless  
20 there is created a duplication in numbering, reads as follows:

21           A. If the juvenile is found to be incompetent due to a mental  
22 illness as defined in Title 43A of the Oklahoma Statutes, the court  
23 shall suspend the criminal proceedings. Competency training, other  
24 forms of treatment, therapy, and services shall be provided by the

1 Department of Mental Health and Substance Abuse Services in the  
2 community, secure facility, detention center, jail, or other lockup  
3 facility.

4 B. The Department of Mental Health and Substance Abuse Services  
5 shall report to the court at least every ninety (90) days as to the  
6 status of the juvenile including, but not limited to, the type of  
7 placement, services provided, level of supervision, the medical and  
8 psychological health of the juvenile, whether the juvenile would be  
9 dangerous if conditionally released into a nonsecure environment,  
10 the assistance and services that would be required for such  
11 conditional release and whether the juvenile has achieved  
12 competency.

13 If the juvenile is determined to have regained competency, a  
14 hearing shall be scheduled within twenty (20) days. If the juvenile  
15 is found to be competent by the court after such rehearing, criminal  
16 proceedings shall be resumed.

17 SECTION 9. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 7301-2.9 of Title 10, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. If the juvenile is found incompetent, but capable of  
21 achieving competency within a reasonable period of time as defined  
22 by this act, the court shall order the juvenile to undergo such  
23 treatment, therapy or training which is calculated to allow the  
24 juvenile to achieve competence, not inconsistent with this act. The

1 court shall further order any additional treatment, therapy, or  
2 training, as recommended by the evaluators and the juvenile's  
3 treatment team, for the juvenile that addresses any other issues  
4 that may have led the juvenile to be incompetent.

5 B. The juvenile shall remain under the jurisdiction of the  
6 court during this time. The court shall appoint a medical  
7 supervisor for a course of treatment. The medical supervisor of  
8 treatment may be any person or agency that agrees to supervise the  
9 course of treatment. The proposed treatment may be either inpatient  
10 or outpatient care depending on the facilities and resources  
11 available to the court and the type of disability sought to be  
12 corrected by the court's order. The court shall require the  
13 supervisor to provide periodic progress reports to the court, no  
14 less than every ninety (90) days, and may pay for the services of  
15 the medical supervisor from court funds. All competency treatment  
16 for a juvenile who is incompetent due to a severe mental illness  
17 shall be conducted on an outpatient basis by the Department of  
18 Mental Health and Substance Abuse Services and shall take place in  
19 the community, at a mental health facility on an outpatient basis,  
20 in a correction or detention facility, group home, or other jail or  
21 lockup facility.

22 C. The court shall allow the juvenile to receive treatment from  
23 private facilities if such facilities are willing. Neither the  
24 state nor the court fund is required to directly pay for such care.

1 SECTION 10. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7301-2.10 of Title 10, unless  
3 there is created a duplication in numbering, reads as follows:

4 If the medical supervisor reports that the juvenile appears to  
5 have achieved competency after a finding of incompetency, the court  
6 shall hold another competency hearing to determine if the juvenile  
7 has achieved competency. If competency has been achieved, the  
8 criminal proceedings shall be resumed.

9 SECTION 11. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 7301-2.11 of Title 10, unless  
11 there is created a duplication in numbering, reads as follows:

12 Commitment of incompetent juveniles to the Department of Mental  
13 Health and Substance Abuse Services shall only occur through the  
14 provisions contained in Title 43A.

15 SECTION 12. This act shall become effective November 1, 2007.

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1 Passed the Senate the 7th day of March, 2007.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2007.

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8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives