

CS for SB 619

THE STATE SENATE
Thursday, February 22, 2007

Committee Substitute for
Senate Bill No. 619

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 619 - By: ADELSON of the Senate and ADKINS of the House.

An Act relating to children; defining terms; requiring certain evaluation; specifying location of certain evaluation; requiring that certain information be provided; requiring submission of certain report; directing court to determine competency in certain circumstances; prohibiting certain findings of incompetency; exempting or suspending certain juveniles from specified proceedings; requiring certain notice; placing time limit on certain hearing; authorizing court to resume certain proceedings; directing certain examination; directing retention of certain juveniles; specifying instructions to be given in certain circumstance; stating certain right; providing for cross-examination; listing questions to be addressed in certain circumstance; directing certain court order; requiring periodic reports in certain circumstance; directing certain treatment; requiring certain appointment; authorizing certain treatment; requiring subsequent hearings in certain circumstance; requiring that the commitment of certain juveniles occur under specified provisions; providing for codification; and providing an effective date.

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

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

As used in Sections 1 through 11 of this act:

1. "Competent" or "competency" means the present ability of a person arrested for or charged with a crime to understand the nature

1 of the charges and proceedings brought against him or her and to
2 effectively and rationally assist in his or her defense;

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

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

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

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

16 6. "Qualified juvenile forensic examiner" means any of the
17 following who also meet the criteria set forth and required by the
18 Commissioner of the Department of Mental Health and Substance Abuse
19 Services:

20 a. psychiatrist with juvenile forensic training and
21 experience,

22 b. psychologist with juvenile forensic training and
23 experience, or

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

6 The court shall require the attorney for the juvenile to provide

7 to the evaluator only the psychiatric records, medical and

8 developmental information, and other information that is deemed

9 relevant to the evaluation of competency. The moving party shall

10 provide the evaluator a summary of the reasons for the evaluation

11 request. All information required by this subsection shall be

12 provided to the evaluator within four (4) days, excluding weekends

13 and holidays, of the issuance of the court order requiring the

14 evaluation and when applicable, shall be submitted prior to

15 admission to the facility providing the inpatient evaluation.

16 D. Upon completion of the evaluation, the evaluator shall

17 submit the report in writing to the court and the attorneys of

18 record concerning:

- 19 1. The juvenile's capacity to understand the proceedings
- 20 against the juvenile;
- 21 2. The juvenile's ability to assist the juvenile's attorney;
- 22 and

1 3. A plan for treatment and competency restoration and need for
2 services, including a description of the suggested necessary
3 services and least restrictive setting to assist the juvenile in
4 restoration to competency, placement suggestions, and suggested
5 court review schedule, not to exceed ninety (90) days between each
6 review.

7 No statements of the juvenile relating to the alleged offense
8 shall be included in the report.

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

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

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

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

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

21 If the court so initiates such a motion, it may appoint the
22 district attorney for the purpose of proceeding with the motion. If
23 the district attorney opposes the motion of the court and by reason

1 of a conflict of interest could not represent the court as movant,
2 then the court shall appoint private counsel. The private counsel
3 shall be reasonably compensated by the court fund.

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

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

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

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

17 4. That if the juvenile whose competency is in question does
18 not have an attorney, the court will appoint an attorney for the
19 juvenile who shall represent the juvenile until final disposition of
20 the case;

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

1 6. That the juvenile whose competency is in question shall be
2 afforded such other rights as are guaranteed by state and federal
3 law. The notice shall be served upon the juvenile whose competency
4 is in question, upon the juvenile's parent or legal guardian, the
5 juvenile's attorney, the district attorney, and also upon the person
6 with whom the juvenile whose competency is in question may reside,
7 or at whose house the juvenile may be, and any other person ordered
8 to be served by the Court. The person making such service shall
9 make affidavit of the same and file such notice, with proof of
10 service, with the district court. This notice may be served in any
11 part of this state.

12 C. Any criminal proceedings against a juvenile whose competency
13 is in question shall be suspended pending the determination of the
14 competency of the juvenile.

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

18 A. Upon filing of a motion for determination of competency, the
19 court shall set a hearing date, which shall be as soon as
20 practicable, but at least one (1) day after service, and not more
21 than thirty (30) days after service of notice as provided by Section
22 3 of this act.

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

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

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

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

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

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

- 1 1. If the juvenile is able to appreciate the nature of the
2 charges made against him or her;
- 3 2. If the juvenile is able to consult with the lawyer and
4 rationally assist in the preparation of the defense of the juvenile;
- 5 3. If the juvenile is unable to appreciate the nature of the
6 charges or to consult and rationally assist in the preparation of
7 the defense, whether the juvenile can attain competency within a
8 reasonable period of time as defined in Section 1 of this act if
9 provided with a course of treatment, therapy or training;
- 10 4. If the juvenile is incompetent due to a mental illness as
11 defined by Title 43A of the Oklahoma Statutes;
- 12 5. If the juvenile were released, whether the juvenile would
13 presently be dangerous as defined in Section 1 of this act; and
- 14 6. If the juvenile's age or other developmental factors are the
15 basis for incompetency.
- 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 individual findings on the juvenile in compliance with
19 Section 2 of this act.

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

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

5 B. The court, at the hearing, shall determine by a
6 preponderance of the evidence if the juvenile is incompetent. Such
7 determination shall include consideration of all reports prepared by
8 the qualified juvenile forensic examiner or examiners. The juvenile
9 shall be presumed to be competent for the purposes of the allocation
10 of the burden of proof and burden of going forward with the
11 evidence.

12 C. The juvenile whose competency is in question shall have the
13 right to be present at the hearing on the petition unless the court
14 finds that the presence of the juvenile makes it impossible to
15 conduct the hearing in a safe or reasonable manner. The court may
16 not decide in advance of the hearing, solely on the basis of the
17 certificate of the examining doctor or doctors, that the juvenile
18 whose competency is in question should not be allowed to appear. It
19 shall be made to appear to the court based on clear and convincing
20 evidence that alternatives to exclusion were attempted before the
21 court renders the juvenile's removal for that purpose or the
22 juvenile's appearance at such hearing improper and unsafe.

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

13 E. The court shall make the required findings listed in Section
14 6 of this act.

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

18 The Court shall answer the following questions in determining
19 the disposition of the juvenile whose competency is in question.

20 1. Is the juvenile incompetent to undergo further criminal
21 proceedings at this time? If the answer is no, criminal proceedings
22 shall be resumed. If the answer is yes, the following questions
23 must be answered.

- 1 a. is the juvenile able to appreciate the nature of the
2 charges made against the juvenile,
3 b. is the juvenile able to consult with the lawyer and
4 rationally assist in the preparation of the defense of
5 the juvenile,
6 c. can the incompetency of the juvenile be corrected
7 within a reasonable period of time, as defined by
8 Section 1 of this act, through treatment, therapy or
9 training,
10 d. is the juvenile incompetent due to a mental illness as
11 defined in Title 43A of the Oklahoma Statutes,
12 e. is the juvenile's age or other developmental factors
13 the basis for incompetency,
14 f. is the juvenile presently dangerous as defined in
15 Section 1 of this act if released.

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

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

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

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

5 3. If the juvenile is found to be incompetent for reasons other
6 than the juvenile has a severe mental illness as defined in Title
7 43A of the Oklahoma Statutes, the court may not commit the juvenile
8 into the custody of the Department of Mental Health and Substance
9 Abuse Services.

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

13 A. If the juvenile is found to be incompetent due to a mental
14 illness as defined in Title 43A of the Oklahoma Statutes, the court
15 shall suspend the criminal proceedings. Competency training, other
16 forms of treatment, therapy, and services shall be provided by the
17 Department of Mental Health and Substance Abuse Services in the
18 community, secure facility, detention center, jail, or other lockup
19 facility.

20 B. The Department of Mental Health and Substance Abuse Services
21 shall report to the court at least every ninety (90) days as to the
22 status of the juvenile including, but not limited to, the type of
23 placement, services provided, level of supervision, the medical and

1 psychological health of the juvenile, whether the juvenile would be
2 dangerous if conditionally released into a nonsecure environment,
3 the assistance and services that would be required for such
4 conditional release and whether the juvenile has achieved
5 competency.

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

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

13 A. If the juvenile is found incompetent, but capable of
14 achieving competency within a reasonable period of time as defined
15 by this act, the court shall order the juvenile to undergo such
16 treatment, therapy or training which is calculated to allow the
17 juvenile to achieve competence, not inconsistent with this act. The
18 court shall further order any additional treatment, therapy, or
19 training, as recommended by the evaluators and the juvenile's
20 treatment team, for the juvenile that addresses any other issues
21 that may have led the juvenile to be incompetent.

22 B. The juvenile shall remain under the jurisdiction of the
23 court during this time. The court shall appoint a medical

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

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

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

22 If the medical supervisor reports that the juvenile appears to
23 have achieved competency after a finding of incompetency, the court

1 shall hold another competency hearing to determine if the juvenile
2 has achieved competency. If competency has been achieved, the
3 criminal proceedings shall be resumed.

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

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-20-07 - DO
12 PASS, As Amended and Coauthored.