

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 715

By: Smalley of the Senate

3 and

4 O'Donnell of the House

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7
8 An Act relating to determinations of competency;
9 amending 22 O.S. 2011, Section 1175.6a, which relates
10 to suspension of criminal proceedings; requiring
11 courts to remand certain persons under certain
12 circumstances; providing for certain treatments by
13 the Department of Mental Health and Substance Abuse
14 Services; updating statutory references; and
15 providing an effective date.

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18 AUTHOR: Add the following Senate Coauthor: Pittman

19 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
20 and insert

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22 "An Act relating to determinations of competency;
23 amending 22 O.S. 2011, Sections 1175.3, 1175.6a and
24 1175.7, which relate to procedures for determining
competency; authorizing examinations to be performed
by qualified forensic examiners; clarifying certain
notification procedure; directing courts to issue
certain order relating to custody and competency
restoration services; updating statutory references;
prohibiting courts from committing incompetent
persons; providing an exception; and declaring an
emergency.

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

2 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1175.3, is
3 amended to read as follows:

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

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

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

16 D. 1. a. If the court finds there is a doubt as to the
17 competency of the person, it shall order the person to
18 be examined by the Department of Mental Health and
19 Substance Abuse Services or by a qualified forensic
20 examiner designated by the Department to perform
21 competency examinations.

22 b. In addition, the Developmental Disabilities Services
23 Division of the Department of Human Services shall
24 receive written notice from the district attorney who

1 filed the criminal petition, and be authorized by
2 order of the court to have a psychologist or other
3 appropriate clinician participate with professionals
4 assigned by any other public or private agency in any
5 competency evaluation wherein mental retardation or
6 other developmental disability may be involved. The
7 psychologist or clinician employed, by contract or
8 otherwise, by the Department of Human Services may
9 issue a separate opinion and recommendation to the
10 court.

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

16 3. If the court determines that the person whose competency is
17 in question may be dangerous as defined in Section 1175.1 of this
18 title, it shall order the person retained in a secure facility until
19 the completion of the competency hearing provided in Section 1175.4
20 of this title. If the court determines the person may be dangerous
21 as defined in Section 1175.1 of this title because the individual is
22 a person requiring treatment as defined in Section 1-103 of Title
23 43A of the Oklahoma Statutes, it may commit the person to the
24 custody of the Department of Mental Health and Substance Abuse

1 Services or any other state agency or private facility for the
2 examination required by this subsection ~~D of this section~~. The
3 person shall be required to undergo examination for a period of time
4 sufficient for the qualified forensic examiner(s) to reach a
5 conclusion as to competency, and the court shall impose a reasonable
6 time limitation for such period of examination.

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

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

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

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

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

20 5. If the person is incompetent because the person is mentally
21 retarded as defined in Section 1408 of Title 10 of the Oklahoma
22 Statutes;

23 6. If the answers to questions 4 and 5 are no, why the
24 defendant is incompetent; and

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 ~~and~~. If the
7 person is in the custody of the Department of Mental Health and
8 Substance Abuse Services, the person shall be returned to the court
9 in the customary manner within five (5) business days. If the
10 person is not returned within that time, the county in which the
11 proceedings are to be held shall pay the costs of maintaining the
12 person at the institution or facility for the period of time the
13 person remains at the institution or facility in excess of the five-
14 day period.

15 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1175.6a, is
16 amended to read as follows:

17 Section 1175.6a A. If the person is found to be incompetent
18 because ~~the person~~ he or she is a person requiring treatment as
19 defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but
20 capable of achieving competence with treatment within a reasonable
21 period of time as defined by Section 1175.1 of this title, the court
22 shall suspend the criminal proceedings and ~~commit the person to the~~
23 ~~legal custody of~~ order the Department of Mental Health and Substance
24 Abuse Services to provide treatment, therapy or training which is

1 calculated to allow the person to achieve competency. The
2 Department may designate a willing entity to provide such competency
3 restoration services on behalf of the Department, provided the
4 entity has qualified personnel. The court shall further order the
5 Department to take custody of the individual as soon as a forensic
6 bed becomes available, unless both the Department and the county
7 jail where the person is being held determine that it is in the best
8 interests of the person to remain in the county jail. Such
9 competency restoration services shall begin within a reasonable
10 period of time after the court has determined that the person is not
11 competent to stand trial.

12 The person shall remain in the custody of the county jail until
13 such time as the Department has a bed available at the forensic
14 facility unless competency restoration services are provided by a
15 designee of the Department, in which case custody of the person
16 shall be transferred to the Department.

17 ~~1.~~ B. The Department of Mental Health and Substance Abuse
18 Services or designee shall make periodic reports to the court as to
19 the competency of the defendant.

20 ~~2.~~ C. If the person is determined by the Department of Mental
21 Health and Substance Abuse Services or designee to have regained
22 competency, or is no longer incompetent because the person is a
23 person requiring treatment as defined by Title 43A of the Oklahoma
24 Statutes, a hearing shall be scheduled within twenty (20) days:

1 ~~a.~~ if

2 1. If found competent by the court or a jury after such
3 rehearing, criminal proceedings shall be resumed~~7~~

4 ~~b.~~ if;

5 2. If the person is found to continue to be incompetent because
6 the person is a person requiring treatment as defined in Title 43A
7 of the Oklahoma Statutes, the person shall be returned to the
8 custody of the Department of Mental Health and Substance Abuse
9 Services~~7~~

10 ~~c.~~ if or designee;

11 3. If the person is found to be incompetent because the person
12 is mentally retarded as defined by Title 10 of the Oklahoma
13 Statutes, the court shall issue the appropriate order as set forth
14 in Section 7 1175.6b of this ~~act~~~~7~~

15 ~~d.~~ if title;

16 4. If the person is found to be incompetent for reasons other
17 than the person is a person requiring treatment as defined by Title
18 43A of the Oklahoma Statutes, and other than the person is mentally
19 retarded as defined in Title 10 of the Oklahoma Statutes, and is
20 also found to be not dangerous as defined by Section 1175.1 of this
21 title, the court shall issue the appropriate order as set forth in
22 Section 7 1175.6b of this ~~act~~~~7~~

23 ~~e.~~ if title; or

1 5. If the person is found to be incompetent for reasons other
2 than the person is a person requiring treatment as defined by Title
3 43A of the Oklahoma Statutes, and other than the person is mentally
4 retarded as defined in Title 10 of the Oklahoma Statutes, but is
5 also found to be dangerous as defined by Section 1175.1 of this
6 title, the court shall issue the appropriate order as set forth in
7 Section ~~8~~ 1175.6c of this ~~act~~ title.

8 ~~B.~~ D. If the person is found to be incompetent because the
9 person is a person requiring treatment as defined by Section 1-103
10 of Title 43A of the Oklahoma Statutes, but not capable of achieving
11 competence with treatment within a reasonable period of time as
12 defined by Section 1175.1 of this title, the court shall commence
13 civil commitment proceedings pursuant to Title 43A and shall dismiss
14 without prejudice the criminal proceeding. If the person is
15 subsequently committed to the Department of Mental Health and
16 Substance Abuse Services pursuant to Title 43A, the statute of
17 limitations for the criminal charges which were dismissed by the
18 court shall be tolled until the person is discharged from the
19 Department of Mental Health and Substance Abuse Services pursuant to
20 Section 7-101 of Title 43A of the Oklahoma Statutes.

21 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1175.7, is
22 amended to read as follows:

23 Section 1175.7 A. If the person is found incompetent, but
24 capable of achieving competency within a reasonable period of time,

1 as defined by the court, the court shall order such person to
2 undergo such treatment, therapy or training which is calculated to
3 allow the person to achieve competence.

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

15 C. The court may not commit the incompetent person to the
16 custody of the Department of Mental Health and Substance Abuse
17 Services, ~~but only where~~ unless the person is a person requiring
18 treatment as defined by Title 43A of the Oklahoma Statutes, ~~or other~~
19 ~~appropriate state agency, if the court, after the hearing provided~~
20 ~~in Section 1175.4 of this title, determines that such commitment is~~
21 ~~necessary for the effective administration of the treatment ordered,~~
22 ~~or if the court determines that the defendant is dangerous to self~~
23 ~~or society as a result of being a person requiring treatment as~~
24 ~~defined by Title 43A of the Oklahoma Statutes.~~

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

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

7 SECTION 4. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval."

11 Passed the House of Representatives the 14th day of April, 2015.

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14 _____
15 Presiding Officer of the House of
Representatives

16 Passed the Senate the ____ day of _____, 2015.

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20 Presiding Officer of the Senate
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