

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 715

By: Smalley of the Senate

and

6 O'Donnell of the House

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8
9 COMMITTEE SUBSTITUTE

10 An Act relating to determinations of competency;
11 amending 22 O.S. 2011, Sections 1175.3, 1175.6a and
12 1175.7, which relate to procedures for determining
13 competency; authorizing examinations to be performed
14 by qualified forensic examiners; clarifying certain
15 notification procedure; directing courts to issue
16 certain order relating to custody and competency
17 restoration services; updating statutory references;
18 prohibiting courts from committing incompetent
19 persons; providing an exception; and declaring an
20 emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2011, 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.

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

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

9 D. 1. a. If the court finds there is a doubt as to the
10 competency of the person, it shall order the person to
11 be examined by the Department of Mental Health and
12 Substance Abuse Services or by a qualified forensic
13 examiner designated by the Department to perform
14 competency examinations.

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

1 otherwise, by the Department of Human Services may
2 issue a separate opinion and recommendation to the
3 court.

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

9 3. If the court determines that the person whose competency is
10 in question may be dangerous as defined in Section 1175.1 of this
11 title, it shall order the person retained in a secure facility until
12 the completion of the competency hearing provided in Section 1175.4
13 of this title. If the court determines the person may be dangerous
14 as defined in Section 1175.1 of this title because the individual is
15 a person requiring treatment as defined in Section 1-103 of Title
16 43A of the Oklahoma Statutes, it may commit the person to the
17 custody of the Department of Mental Health and Substance Abuse
18 Services or any other state agency or private facility for the
19 examination required by this subsection ~~D of this section~~. The
20 person shall be required to undergo examination for a period of time
21 sufficient for the qualified forensic examiner(s) to reach a
22 conclusion as to competency, and the court shall impose a reasonable
23 time limitation for such period of examination.
24

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

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

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

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

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

14 5. If the person is incompetent because the person is mentally
15 retarded as defined in Section 1408 of Title 10 of the Oklahoma
16 Statutes;

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

19 7. If the person were released, whether such person would
20 presently be dangerous as defined in Section 1175.1 of this title.

21 F. Upon completion of the competency evaluation, the Department
22 of Mental Health and Substance Abuse Services or qualified forensic
23 examiner designated by the Department to perform competency
24 examinations shall notify the court of its findings and. If the

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

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

11 Section 1175.6a A. If the person is found to be incompetent
12 because ~~the person~~ he or she is a person requiring treatment as
13 defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but
14 capable of achieving competence with treatment within a reasonable
15 period of time as defined by Section 1175.1 of this title, the court
16 shall suspend the criminal proceedings and ~~commit the person to the~~
17 ~~legal custody of~~ order the Department of Mental Health and Substance
18 Abuse Services to provide treatment, therapy or training which is
19 calculated to allow the person to achieve competency. The
20 Department may designate a willing entity to provide such competency
21 restoration services on behalf of the Department, provided the
22 entity has qualified personnel. The court shall further order the
23 Department to take custody of the individual as soon as a forensic
24 bed becomes available, unless both the Department and the county

1 jail where the person is being held determine that it is in the best
2 interests of the person to remain in the county jail. Such
3 competency restoration services shall begin within a reasonable
4 period of time after the court has determined that the person is not
5 competent to stand trial.

6 The person shall remain in the custody of the county jail until
7 such time as the Department has a bed available at the forensic
8 facility unless competency restoration services are provided by a
9 designee of the Department, in which case custody of the person
10 shall be transferred to the Department.

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

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

19 a. ~~if~~

20 1. If found competent by the court or a jury after such
21 rehearing, criminal proceedings shall be resumed,

22 b. ~~if;~~

23 2. If the person is found to continue to be incompetent because
24 the person is a person requiring treatment as defined in Title 43A

1 of the Oklahoma Statutes, the person shall be returned to the
2 custody of the Department of Mental Health and Substance Abuse
3 Services~~;~~

4 ~~e.~~ if or designee;

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

9 ~~d.~~ if title;

10 4. If the person is found to be incompetent for reasons other
11 than the person is a person requiring treatment as defined by Title
12 43A of the Oklahoma Statutes, and other than the person is mentally
13 retarded as defined in Title 10 of the Oklahoma Statutes, and is
14 also found to be not dangerous as defined by Section 1175.1 of this
15 title, the court shall issue the appropriate order as set forth in
16 Section ~~7~~ 1175.6b of this ~~act~~,

17 ~~e.~~ if title; or

18 5. If the person is found to be incompetent for reasons other
19 than the person is a person requiring treatment as defined by Title
20 43A of the Oklahoma Statutes, and other than the person is mentally
21 retarded as defined in Title 10 of the Oklahoma Statutes, but is
22 also found to be dangerous as defined by Section 1175.1 of this
23 title, the court shall issue the appropriate order as set forth in
24 Section ~~8~~ 1175.6c of this ~~act~~ title.

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

14 SECTION 3. AMENDATORY 22 O.S. 2011, 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
24 medical supervisor of treatment may be any person or agency that

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

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

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

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

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

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