SENATE FLOOR VERSION
February 17, 2015
AS AMENDED

SENATE BILL NO. 457 By: Griffin

[child competency proceedings - certain issue - appointment of counsel - competency evaluation - report - competency hearing - plan and reports - dismissal - codification - 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 2-2-401.1 of Title 10A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Competent" and "competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense. A child is incompetent if, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense;

2. "Child with intellectual disability" means a child with significantly less than the average general intellectual functioning

ability generally present in a child with an Intelligence Quotient score of 70 or below, existing concurrently with deficiencies in adaptive behavior;

3. "Developmental disability" means a severe, chronic disability:

a. attributable to a mental or physical impairment or a combination of those impairments,

b. occurring before the individual reaches age 18,

c. likely to continue indefinitely,

d. resulting in substantial functional limitations in three or more of the following areas of major life activity:

(1) self-care,

(2) receptive and expressive language,

(3) learning,

(4) mobility,

(5) self-direction,

(6) capacity for independent living, and

(7) economic self-sufficiency; and

e. reflecting the need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or for other assistance of lifelong or extended duration and are individually planned and coordinated;

4. "Mental illness" has the same meaning as in paragraph 11 of Section 5-502 of Title 43A of the Oklahoma Statutes;

5. "Proceeding" means any delinquency proceeding under the Oklahoma Juvenile Code.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-401.2 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. 1. At any time prior to or during any proceeding pursuant to the Oklahoma Juvenile Code other than a proceeding alleging the child to be a child in need of supervision, the child's attorney, the district attorney, or the court may raise the issue of a child's competency to participate in the proceeding. If at the time the issue of competency is raised the child is not represented by counsel, the court shall immediately appoint counsel and shall also appoint a guardian ad litem to ensure the best interests of the child are addressed. The court shall stay all proceedings except to allow the filing of a delinquency petition.

2. In any proceeding pursuant to the Juvenile Code other than a proceeding alleging the child to be a child in need of supervision, if the child who is the subject of the proceeding is thirteen (13) years or older and if the child is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled, there exists a rebuttable presumption that the child is not incompetent. Such presumption applies only for making a

determination as to whether the child is incompetent and shall not be used or applicable for any other purpose.

B. The court may find a child incompetent without ordering a competency evaluation or hearing if either of the following applies:

1. The district attorney, the child's attorney, and at least one of the child's parents, legal guardians, or guardian ad litem agree to the determination; or

2. The court relies on a prior court determination that the child was incompetent and could not attain competency even if the child were to receive competency attainment services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-401.3 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. When the party specified in paragraph 1 of subsection A of Section 2 of this act has reasonable basis to believe that a child is incompetent to proceed in the delinquency action, the party shall file a motion for determination of competency. The motion shall state that the child is incompetent to proceed and shall state facts sufficient to set forth the reasonable basis to conduct a competency evaluation. If the court raises the issue sua sponte, the court shall set forth the reasonable basis to believe the child is incompetent to proceed by written order.

B. Within fifteen (15) judicial days after the motion is made pursuant to subsection C of Section 2 of this act, the court shall make one of the following determinations:

1. That the child is incompetent pursuant to subsection B of Section 2 of this act; or

2. Without conducting a hearing, that there exists a reasonable basis to conduct a competency evaluation; or

3. Conduct a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. If the court conducts a hearing, it shall make its determination within five (5) judicial days after the conclusion of the hearing whether a reasonable basis exists for the child to receive a competency evaluation.

C. If the court determines there is a reasonable basis for a competency evaluation or if the district attorney and the child's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, taking into account the public safety and the best interests of the child.

1. The court shall provide in its order that the evaluator shall have access to all relevant confidential and public records related to the child, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide

to the evaluator a copy of the petition and the names and contact information for the judge, district attorney, child's attorney, and parents or legal guardians.

2. Within five (5) judicial days after the court appoints an evaluator, the district attorney shall deliver to the evaluator copies of relevant police reports and other background information relevant to the child that are in the district attorney's possession.

3. Within five (5) judicial days after the court appoints an evaluator, the child's attorney shall deliver to the evaluator copies of relevant police reports and other relevant records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-401.4 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. The evaluation of a child who does not appear to the court to be a person who is intellectually disabled shall be made by an evaluator who is one of the following:

1. A licensed psychiatrist or licensed clinical psychologist who has been in the actual practice of medicine or clinical psychology for not less than three (3) consecutive years immediately preceding the appointment, and qualified by specialized education,

training, or experience in forensic evaluations of children or adolescents; or

2. A licensed mental health professional as defined in paragraph 8 of Section 5-502 of Title 43A of the Oklahoma Statutes employed by a facility operated by the Department of Mental Health and Substance Abuse Services and designated by the Commissioner of the Department of Mental Health and Substance Abuse Services as appropriate for the inpatient evaluation for treatment of minors who is appointed by the director of the facility to conduct the competency evaluation.

B. An evaluation of a child who appears to the court to be at least moderately intellectually disabled shall be made by an evaluator who is a licensed physician, licensed psychiatrist or licensed clinical psychologist who has been in the actual practice of medicine or clinical psychology for not less than three (3) consecutive years immediately preceding the appointment, has expertise in child development specific to severe chronic disability of children attributable to intellectual disability, and is qualified by specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disability.

C. If an evaluation is conducted by an evaluator qualified pursuant to subsection A of this section and the evaluator concludes that the child is a person who is at least moderately intellectually

disabled, the evaluator shall discontinue the evaluation and notify the court within one (1) judicial day after reaching such conclusion. Within two (2) judicial days thereafter, the court shall order the child to undergo an evaluation by an evaluator qualified pursuant to subsection B of this section. Within two (2) judicial days after the appointment of the newly appointed evaluator, the originally appointed evaluator shall deliver to the newly appointed evaluator all information relating to the child obtained during the original evaluation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-401.5 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. The evaluator shall file with the court a written competency evaluation report within thirty (30) days after the date of the order of appointment. For good cause shown, the court may extend the time for filing for a period not to exceed fifteen (15) days. The report shall include the evaluator's opinion as to whether the child, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, is currently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report shall not include the evaluator's opinion as to the details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the

offense or could be culpable for committing the offense. No statement made by a child during an evaluation or hearing conducted pursuant to this act shall be used against the child on the issue of responsibility or guilt in subsequent court proceedings.

B. A competency evaluation report shall address the following questions:

1. Whether the child is able to appreciate the nature of the allegations;

2. Whether the child is able to consult with an attorney and rationally and effectively assist in the preparation of a defense;

3. If the answer to question 1 or 2 is no, whether the child can attain competency within a reasonable time if provided with a course of treatment, therapy, or training;

4. Whether the child is mentally ill or is a child requiring treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act; and

5. If the child is released without treatment, therapy, or training, whether the child poses a significant threat to the life or safety of him or herself or others?.

C. The competency evaluation report shall include the evaluator's opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in subsection B of this section. If the evaluator concludes that the child's competency is impaired but that

the child may be able to understand the nature and objectives of the proceeding against the child, to assist in the child's defense, and to understand the consequences that may be imposed or result from the proceedings with reasonable accommodations, the report shall include recommendations for reasonable accommodations the court might make to assist in compensating for mental competency weaknesses. If the evaluator concludes the child's competency is so impaired that the child would not be able to understand the nature and objectives of the proceeding against the child, to assist in the child's defense, or to understand the consequences that may be imposed or result from the proceedings, the report shall also include a prognosis as to whether there is a substantial probability that the child could attain competency within the periods set forth in subparagraph a of paragraph 3 of subsection C of Section 7 of this act.

D. If the evaluator concludes there is a substantial probability that the child could attain competency within the periods set forth in subparagraph a of paragraph 3 of subsection C of Section 7 of this act, the competency evaluation report shall include:

1. A recommendation as to the least restrictive setting for child competency attainment services consistent with the child's ability to attain competency and the safety of both the child and the public; and

2. A list of the providers of child competency attainment services known to the evaluator located in reasonable proximity to the child's current residence.

E. The competency evaluation reports shall also include:

1. The evaluation procedures used, including psychometric tests administered, records reviewed, and identity of persons interviewed;

2. Pertinent background information, including history of educational performance, psychiatric history, and family history;

3. Results of mental status examination; and

4. A description of any psychiatric symptoms or cognitive deficiencies, including a diagnosis, if one has been made.

F. The court shall provide a copy of each competency evaluation report it receives to the district attorney, the child's attorney, the child's parents, legal guardian, and guardian ad litem, if one was appointed. Counsel shall not disseminate the report.

G. The expense of obtaining an evaluation ordered by the court may not be recovered from the child or the child's parents or legal guardians. However, expenses associated with missed appointments may be recovered from the child's parents or legal guardians.

H. 1. Before a hearing is held pursuant to Section 6 of this act, any party may object to the contents of a competency evaluation report and by motion request an additional evaluation. If the court orders an additional evaluation, the evaluator shall complete such evaluation as soon as possible but not more than forty-five (45)

calendar days after the order allowing the additional evaluation is issued. An additional evaluation shall meet all the criteria that apply to a court-ordered evaluation.

2. An additional evaluation allowed under paragraph 1 of this subsection shall be made at the moving party's expense unless the child's parents or legal guardian are indigent. If determined to be indigent, the court fund shall pay the costs of the additional evaluation. However, the court fund shall not be required to pay costs exceeding that which the court would normally pay for a competency evaluation conducted by a provider with which the court has contracted to conduct competency evaluations.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-401.6 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. Not less than fifteen (15) nor more than thirty (30) judicial days after receiving the evaluator's report or an additional evaluation, the court shall conduct a hearing to determine the child's competency to participate in the proceeding.

B. The competency evaluation report shall be admissible in evidence. The evaluator may be called as a witness and be subject to cross examination. If the court contacts the evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

C. In determining the competency of the child to participate in the proceeding the court shall consider the content of all competency evaluation reports admitted as evidence. The court may consider additional evidence introduced at the hearing by the child and by the district attorney.

D. 1. Except as otherwise provided, the court shall make a written determination as to the child's competency or incompetency based on a preponderance of the evidence within ten (10) judicial days after completion of the hearing. The court may extend, by journal entry, the period for making the determination for not more than ten (10) additional calendar days.

2. The court shall not find a child incompetent to proceed solely because the child is receiving or has received in-patient treatment as a voluntary or involuntary mentally ill patient pursuant to Section 8-210 et seq. of Title 43A of the Oklahoma Statutes, or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-401.7 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. After a hearing pursuant to Section 6 of this act, if the court determines by a preponderance of the evidence that the child

is competent to proceed, the delinquency proceedings shall be resumed as provided by law.

B. After a hearing held pursuant to Section 6 of this act, if the court determines by the preponderance of the evidence that the child is incompetent to proceed and cannot attain competency within the period of time application under subparagraph a of paragraph 3 of subsection C of this section, the court shall dismiss the petition or information without prejudice, except that the court may delay dismissal for up to ninety (90) calendar days and take any of the following actions:

1. Refer the matter to the Oklahoma Department of Human Services and request a determination whether a deprived action should be filed in accordance with the Oklahoma Children's Code alleging that the child is a neglected, abused or dependent child;

2. Refer the matter to the district attorney for consideration of initiating a Child in Need of Supervision or Minor in Need of Mental Health and Substance Abuse Treatment proceeding in accordance with the Oklahoma Juvenile Code or Inpatient Mental Health and Substance Abuse Treatment of Minors Act; or

3. Place the child in the custody of a parent, legal guardian, or other suitable person under such terms and conditions as deemed in the best interests of the child and the public, which conditions may include the provision of outpatient services by any suitable public or private agency.

C. If the court determines by a preponderance of the evidence that a child is incompetent to proceed but may likely attain competency, the court shall stay the proceedings and order the child to receive services designated to assist the child in attaining competency, based upon the recommendations in the competency evaluation report unless the court makes specific findings that the recommended services are not justified. The court shall order the child's parent or legal guardian to contact the designated provider by a specified date to arrange for services.

1. The competency attainment services provided to a child shall be based on a court-approved competency attainment plan described in paragraph 2 of subsection D of this section, and are subject to the conditions and time periods required pursuant to this section measured from the date the court approves the plan.

2. The court shall order that the competency attainment services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the child. If the child has been released on temporary orders and refuses or fails to cooperate with the service provider, the court may modify the orders to require a more appropriate setting.

3. No child shall be required to participate in competency attainment services for longer than is required to attain competency. The following maximum periods of participation shall apply:

a. if services are being provided outside a residential setting, the child shall not participate in those services for a period exceeding six (6) months or upon the child's 18th birthday, whichever occurs first, if the child is charged with an act that would be a misdemeanor if committed by an adult; or a period exceeding twelve (12) months or upon the child's 18th birthday, whichever occurs first, if the child is charged as a delinquent for an act that would be a felony if committed by an adult,

b. if services are being provided in a residential, detention, or other secure setting for reasons other than to participate in competency attainment services and the child is also ordered to participate in competency attainment services currently, the child shall participate in the competency attainment services for not longer than the relevant period set forth in subparagraph a of this paragraph. In no event shall a child who is found to be not competent to proceed as a pre-adjudicated delinquent be held in a secure detention facility other than the length of time permitted in subparagraph a of paragraph 1 of subsection A of Section 2-3-101 of Title 10A of the Oklahoma Statutes.

D. 1. Within ten (10) judicial days after the court orders the provider responsible for the child's competency attainment services, the court shall deliver to that provider:

a. the name and address of the child's counsel,

b. a copy of the child's Petition,

c. a copy of the competency evaluation report,

d. the name, address, and phone number of the child's parents or legal guardian,

e. OJA employee or Juvenile Bureau employee responsible for the intake, supervision, or custody of the child, if adjudicated, and

f. any other relevant documents or reports concerning the child's health that has come to the attention of the court.

2. Not later than fifteen (15) calendar days after the child contacts the competency attainment provider, a plan for the child to attain competency shall be submitted to the court by the provider. The court shall provide copies of the plan to the district attorney, the child's attorney, the guardian ad litem, if any, and the child's parents or legal guardian.

E. The provider shall submit reports to the court pursuant to the following schedule:

1. Every ninety (90) calendar days and on the termination of services. Each report shall include the following:

a. the services provided to the child, including medication, education and counseling,

b. the likelihood that the competency of the child to proceed will be restored within the applicable period of time set forth in subparagraph a of paragraph 3 of subsection C of this section,

c. whether the child can make simple decisions in response to well-explained alternatives,

d. whether the child can distinguish an admission from a denial and understand and appreciate the consequences of each,

e. whether the child can understand and appreciate his or her legal rights,

f. whether the child can understand and appreciate what defenses are available and maintain a consistent defense,

g. whether the child can understand and appreciate the adversarial nature of the legal process, including the roles of the judge, defense counsel, and the district attorney,

h. whether the child can disclose to counsel facts pertinent to the proceedings at issue and aid counsel in locating and examining relevant witnesses,

i. whether the child can display appropriate courtroom behavior,

j. whether the child can testify without his or her mental state deteriorating under the stress of trial, and

k. whether the child can listen to witness testimony and inform counsel of any distortions and misstatements;

2. Three (3) judicial days after the provider's determination that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency;

3. Three (3) judicial days after the provider's determination that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and taking into account the public safety and the best interests of the child. The provider shall include in the report an assessment of the danger the child poses to himself or others and an assessment of the appropriateness of the placement;

4. Three (3) judicial days after the provider's determination that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings against the child, to assist in the child's defense, and to understand and appreciate the consequences that may be imposed or result from the proceedings with or without reasonable accommodations. The report

shall include recommendations for the accommodations that would be necessary or advantageous; and

5. Three (3) judicial days after the provider's determination that the child will not achieve the goals of the plan within the applicable period of time pursuant to subparagraph a of paragraph 3 of subsection C of this section. The report shall include recommendations for services for the child and taking into account the public safety and the best interests of the child.

F. The court shall provide copies of any report made by the provider to the district attorney, the child's attorney, and the child's guardian ad litem, if any. The Court shall provide copies of any reports made by the provider to the child's parents or legal guardians, unless the court finds that doing so is not in the best interest of the child.

G. Within fifteen (15) judicial days after receiving a provider's report, the court may hold a hearing to determine if a new order is necessary.

1. If the court determines that the child is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the child attain competency within the relevant period of time as set forth in subparagraph a of paragraph 3 of subsection C of this section.

2. If the court determines that the child has not or will not attain competency within the relevant period of time as set forth in subparagraph a of paragraph 3 of subsection C of this section, the court shall dismiss the delinquency or youthful offender charge without prejudice. The court may delay the dismissal for up to ninety (90) calendar days and either:

a. refer the matter to the Oklahoma Department of Human Services and request a determination whether a deprived action should be filed in accordance with the Oklahoma Children's Code alleging that the child is a neglected, abused or dependent child, or

b. Place the child in the custody of his parent, legal guardian, or other suitable person under such terms and conditions as deemed in the best interests of the child and the public, which conditions may include the provision of outpatient services by any suitable public or private agency.

3. A dismissal under paragraph 2 of this subsection shall not preclude a future delinquent child proceeding as provided for under Title 10A of the Oklahoma Statutes if the child eventually attains competency.

H. After a hearing held pursuant to paragraph 1 of subsection G of this section, the court determines that the child has attained

competency, the court shall proceed with the delinquent child's proceeding in accordance with the provisions of the Juvenile Code.

I. A dismissal under this section does not bar a civil action based on the acts or omissions that formed the basis of the petition or information.

SECTION 8. This act shall become effective November 1, 2015.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 17, 2015 - DO PASS AS AMENDED