

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 2312

By: Lawson

7 AS INTRODUCED

8 An Act relating to children; amending Sections 1, 2,
9 3 and 7, Chapter 398, O.S.L. 2015 (10A O.S. Supp.
10 2020, Sections 2-2-401.1, 2-2-401.2, 2-2-401.3 and 2-
11 2-401.7), which relate to competency evaluations;
12 modifying definition; allowing for competency to be
13 raised in youthful offender proceedings; permitting
14 Office of Juvenile Affairs to raise issue of
15 competency; providing for access to records;
16 requiring dismissal under certain circumstances;
17 requiring court to order services in certain
18 circumstances; providing for procedures with respect
19 to youthful offender proceedings; and providing an
20 effective date.

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

22 SECTION 1. AMENDATORY Section 1, Chapter 398, O.S.L.
23 2015 (10A O.S. Supp. 2020, Section 2-2-401.1), is amended to read as
24 follows:

25 Section 2-2-401.1 As used in ~~this act~~ Sections 2-2-401.1
26 through 2-2-401.7 of this title:

27 1. "Competent" and "competency" refer to a child's ability to
28 understand the nature and objectives of a proceeding against the

1 child or to assist in the child's defense. A child is incompetent
2 if, due to developmental disability, developmental immaturity,
3 intellectual disability, or mental illness, the child is presently
4 incapable of understanding the nature and objective of proceedings
5 against the child or of assisting in the child's defense;

6 2. "Credentialed forensic evaluator" means a licensed
7 psychologist, psychiatrist or other physician with necessary
8 education, training, and experience to perform juvenile competency
9 evaluations, and who has been approved to render such opinions for
10 the court;

11 3. "Developmental disability" means a severe and chronic
12 disability that is attributable to a mental or physical impairment.
13 Such disabilities include, but are not limited to, cerebral palsy,
14 epilepsy, autism, or other neurological conditions that lead to
15 impairment of general intellectual functioning or adaptive behavior;

16 4. "Developmental immaturity" means a condition based on a
17 juvenile's chronological age and significant lack of developmental
18 skills when the juvenile has no significant mental illness or
19 intellectual disability;

20 5. "Intellectual disability" means a disability characterized
21 by significant limitations both in intellectual functioning and in
22 adaptive behavior as expressed in conceptual, social and practical
23 adaptive skills;

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

3 7. "Proceeding" means any delinquency or youthful offender
4 proceeding under the Oklahoma Juvenile Code.

5 SECTION 2. AMENDATORY Section 2, Chapter 398, O.S.L.
6 2015 (10A O.S. Supp. 2020, Section 2-2-401.2), is amended to read as
7 follows:

8 Section 2-2-401.2 A. 1. At any time prior to or during
9 delinquency or youthful offender proceedings pursuant to the
10 Oklahoma Juvenile Code, the child's attorney, the district attorney,
11 or the court may raise the issue of a child's competency to
12 participate in the proceeding. If at the time the issue of
13 competency is raised the child is not represented by counsel, the
14 court shall immediately appoint counsel. The court shall stay all
15 proceedings except to allow the filing of a delinquency petition or
16 youthful offender information.

17 2. At any time prior to or during delinquency or youthful
18 offender proceedings pursuant to the Oklahoma Juvenile Code, the
19 Office of Juvenile Affairs may raise the issue of a child's
20 competency for any child in its custody.

21 3. In any delinquency or youthful offender proceeding pursuant
22 to the Juvenile Code, if the child who is the subject of the
23 proceeding is thirteen (13) years or older and if the child is not
24 otherwise found to be developmentally disabled, developmentally

1 immature, intellectually disabled, or mentally ill, there exists a
2 rebuttable presumption that the child is competent. Such
3 presumption applies only for making a determination as to whether
4 the child is competent and shall not be used or applicable for any
5 other purpose.

6 B. The court may find a child incompetent without ordering a
7 competency evaluation or hearing if the district attorney and the
8 child's attorney, and at least one of the child's parents, legal
9 guardians, or guardian ad litem agree to the determination.

10 SECTION 3. AMENDATORY Section 3, Chapter 398, O.S.L.
11 2015 (10A O.S. Supp. 2020, Section 2-2-401.3), is amended to read as
12 follows:

13 Section 2-2-401.3 A. When the district attorney ~~or~~, the
14 child's attorney, or the Office of Juvenile Affairs on behalf of a
15 child in its custody has reasonable basis to believe that a child is
16 incompetent to proceed in the delinquency ~~action~~ or youthful
17 offender proceeding, the party shall file a motion for determination
18 of competency. The motion shall state that the child is incompetent
19 to proceed and shall state facts sufficient to set forth the
20 reasonable basis to conduct a competency evaluation. If the court
21 raises the issue sua sponte, the court by written order shall set
22 forth the reasonable basis that the child is incompetent to proceed.

23 B. Within five (5) judicial days after the motion is made, the
24 court shall make one of the following determinations:

1 1. That the child is incompetent pursuant to subsection B of
2 Section ~~2~~ 2-2-401.2 of this ~~act~~ title; or

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

5 3. To schedule a hearing to determine whether there exists a
6 reasonable basis to conduct a competency evaluation. Such hearing
7 shall be held within ten (10) judicial days. The court's
8 determination shall be announced no later than one (1) judicial day
9 after the conclusion of the hearing.

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

17 1. The court shall provide in its order that the evaluator
18 shall have access to all relevant confidential and public records
19 related to the child, including competency evaluations and reports
20 conducted in prior delinquent or youthful offender proceedings. The
21 court shall provide to the evaluator a copy of the delinquency
22 petition or youthful offender information and the names and contact
23 information for the judge, district attorney, child's attorney, and
24 parents or legal guardians.

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

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

12 SECTION 4. AMENDATORY Section 7, Chapter 398, O.S.L.
13 2015 (10A O.S. Supp. 2020, Section 2-2-401.7), is amended to read as
14 follows:

15 Section 2-2-401.7 A. After a hearing pursuant to Section ~~6~~ 2-
16 2-401.6 of this ~~act~~ title, if the court determines by a
17 preponderance of the evidence that the child is competent to
18 proceed, the delinquency or youthful offender proceedings shall be
19 resumed as provided by law.

20 B. After a hearing pursuant to Section ~~6~~ 2-2-401.6 of this ~~act~~
21 title, if the court determines by the preponderance of the evidence
22 that the child is incompetent to proceed and cannot attain
23 competency within the period of time application under subparagraph
24 a of paragraph 3 of subsection C of this section, the court shall

1 dismiss the petition or information without prejudice, and take
2 either of the following actions:

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

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

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

22 1. The competency attainment services provided to a child shall
23 be based on a court-approved competency attainment plan described in
24 paragraph 2 of subsection D of this section, and are subject to the

1 conditions and time periods required pursuant to this section
2 measured from the date the court approves the plan.

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

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

13 a. if the services are provided, the child shall not
14 participate in those services for a period exceeding
15 six (6) months or upon the child's 18th birthday, or
16 up to the child's 19th birthday if ordered by the
17 court in order to complete the six (6) months of
18 treatment, if the child is charged with an act that
19 would be a misdemeanor if committed by an adult,

20 b. if the services are provided, the child shall not
21 participate for a period exceeding twelve (12) months
22 or upon the child's 18th birthday, or up to the
23 child's 19th birthday if ordered by the court in order
24 to complete the twelve (12) months of treatment, if

1 the child is charged as a delinquent or youthful
2 offender for an act that would be a felony if
3 committed by an adult.

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

- 7 a. the name and address of the child's counsel,
- 8 b. a copy of the child's Petition or Information,
- 9 c. a copy of the competency evaluation report,
- 10 d. the name, address, and phone number of the child's
11 parents or legal guardian,
- 12 e. the name of the Office of Juvenile Affairs employee or
13 Juvenile Bureau employee responsible for the intake,
14 supervision, or custody of the child, if adjudicated,
- 15 f. the name of the Department of Human Services
16 caseworker, if any, and
- 17 g. any other relevant documents or reports concerning the
18 child's health that have come to the attention of the
19 court.

20 2. Not later than ten (10) judicial days after the child
21 contacts the competency attainment provider, a plan for the child to
22 attain competency shall be submitted to the court by the provider.
23 The court shall provide copies of the plan to the district attorney,
24 the child's attorney, the guardian ad litem, if any, the Office of

1 Juvenile Affairs or Juvenile Bureau, and the child's parent or legal
2 guardian.

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

5 1. Every ninety (90) calendar days and upon completion or the
6 termination of services. Each report shall include the following:

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

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

13 c. the progress made towards the goals and objectives for
14 the restoration of competency identified in the
15 recommendations from the competency evaluation as
16 adopted by the court;

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

20 3. Three (3) judicial days after the provider's determination
21 that the current setting is no longer the least-restrictive setting
22 that is consistent with the child's ability to attain competency and
23 taking into account the public safety and the best interests of the
24 child. The provider shall include in the report an assessment of

1 the danger the child poses to himself, herself or others and an
2 assessment of the appropriateness of the placement;

3 4. Three (3) judicial days after the provider's determination
4 that the child has achieved the goals of the plan and would be able
5 to understand the nature and objectives of the proceedings against
6 the child, to assist in the child's defense, and to understand and
7 appreciate the consequences that may be imposed or result from the
8 proceedings with or without reasonable accommodations. The report
9 shall include recommendations for the accommodations that would be
10 necessary or advantageous; and

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

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

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

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

10 2. If the court determines that the child has not or will not
11 attain competency within the relevant period of time as set forth in
12 subparagraph a of paragraph 3 of subsection C of this section, the
13 court shall dismiss the delinquency or youthful offender charge
14 without prejudice.

15 3. A dismissal under paragraph 2 of this subsection shall not
16 preclude a future delinquent child or youthful offender proceeding
17 as provided for under ~~Title 10A of the Oklahoma Statutes~~ this title.

18 H. After a hearing held pursuant to subsection G of this
19 section, if the court determines that the child has attained
20 competency, the court shall proceed with the ~~delinquent child's~~
21 delinquency or youthful offender proceeding in accordance with the
22 provisions of the Juvenile Code.

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

4 SECTION 5. This act shall become effective November 1, 2021.

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6 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
7 SERVICES, dated 02/09/2021 - DO PASS.
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