An Act

ENROLLED SENATE
BILL NO. 457

By: Griffin and Sharp of the Senate

and

Nelson of the House

An Act relating to child competency proceedings; defining terms; authorizing parties to raise certain issue; requiring appointment of counsel under certain circumstances; creating certain presumption; allowing certain finding; requiring certain contents for certain motions; authorizing certain competency evaluation; requiring delivery of certain information to evaluator; establishing requirements for certain evaluator; requiring certain report; specifying required contents of certain report; establishing procedures for certain evaluation; authorizing additional evaluation under certain circumstances; requiring competency hearing; establishing procedures for certain proceedings; requiring certain written determination; authorizing certain actions; allowing order for certain services; specifying requirements for certain services; requiring certain plan and reports; establishing requirements for certain reports; requiring provision of copies of certain reports; allowing certain hearing; stating effect of certain dismissal; providing for codification; and providing an effective date.

SUBJECT: Child competency proceedings

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 or to assist in the child's defense. A child is incompetent if, due to developmental disability, developmental immaturity, intellectual disability, or mental illness, 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. "Credentialed forensic evaluator" means a licensed psychologist, psychiatrist or other physician with necessary education, training, and experience to perform juvenile competency evaluations, and who has been approved to render such opinions for the court;

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

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

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

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

7. "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 delinquency proceedings pursuant to the Oklahoma Juvenile Code, 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. The court shall stay all proceedings except to allow the filing of a delinquency petition.

2. In any delinquency proceeding pursuant to the Juvenile Code, 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 developmentally disabled, developmentally immature, intellectually disabled, or mentally ill, there exists a rebuttable presumption that the child is competent. Such presumption applies only for making a determination as to whether the child is competent 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 the district attorney and the child's attorney, and at least one of the child's parents, legal guardians, or guardian ad litem agree to the determination.

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 district attorney or the child's attorney 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 by written order shall set forth the reasonable basis that the child is incompetent to proceed.

B. Within five (5) judicial days after the motion is made, 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. To schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. Such hearing shall be held within ten (10) judicial days. The court's determination shall be announced no later than one (1) judicial day after the conclusion of the hearing.

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 orders an evaluation, 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 orders an evaluation, 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. An evaluation ordered by the court shall be conducted by a credentialed forensic evaluator.

1. A credentialed forensic evaluator shall demonstrate education or training in the following areas as necessary for the focus of the evaluation ordered by the court:

a. forensic evaluation procedures for juveniles, including accepted criteria used in evaluating competency,

b. evaluation, diagnosis, and treatment of children and adolescents with developmental disability, developmental immaturity, intellectual disability, or mental illness,

c. clinical understanding of child and adolescent development, and

d. familiarity with competency standards in this state.

2. The Oklahoma Commission on Children and Youth shall establish procedures for ensuring the training and qualifications of individuals approved to conduct juvenile competency evaluations. The Commission shall provide a list of credentialed forensic evaluators to the Administrative Office of the Courts.

B. A court may appoint as evaluator a psychologist, psychiatrist, or other physician who does not meet the requirements of subsection A of this section only if exigent circumstances require the evaluator to have specialized expertise to examine the child that would not ordinarily be possessed by a psychologist, psychiatrist, or other physician who meets the requirements of a credentialed forensic evaluator.

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 thirty (30) days. The report shall include the evaluator's opinion as to whether the child, due to developmental disability, developmental immaturity, intellectual disability, or mental illness, 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 understand and appreciate the charges and their seriousness;

2. Whether the child is able to consult with an attorney and rationally and factually assist in his or her defense;

3. Whether the child can understand and reasonably participate in the proceedings;

4. If the answer to question 1, 2 or 3 is no, whether the child can attain competency within a reasonable time pursuant to Section 7 of this act if provided with a course of treatment, therapy, or training;

5. Whether the child poses an imminent threat to the life or safety of him or herself or others; and

6. Whether the child is mentally ill or is a minor in need of treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. If the evaluator concludes that the child's competency is impaired, but that the child may be rendered competent by reasonable accommodations, the report shall include recommendations for reasonable accommodations which the court shall order to assist in compensating for the competency impairments.

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 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.

E. The competency evaluation report 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 and the child's attorney, and may provide a copy upon request to the child's parents, legal guardian, and guardian ad litem, if one was appointed.

G. The expense of an evaluation ordered by the court may be recovered from the child or the child's parents or legal guardians based upon their ability to pay. Expenses associated with missed

appointments may be recovered from the child's parents or legal guardians.

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 more than fifteen (15) judicial days after receiving the evaluator's report, the court shall conduct a hearing to determine the child's competency to participate in the proceeding. The court may continue the hearing for good cause shown.

B. The competency evaluation report shall be admissible in evidence. The evaluator may be called as a witness and be subject to cross examination by all parties. If authorized by the court, hearings held pursuant to this section may be conducted via teleconference. 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 district attorney and the child's attorney.

D. 1. Except as otherwise provided, the court shall make a written determination as to the child's competency based on a preponderance of the evidence within ten (10) judicial days after completion of the hearing. The burden of proof shall be on the moving party.

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 5-501 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 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 without prejudice, and take either 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; or

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.

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

b. if the services are provided, the child shall not participate for a period exceeding twelve (12) months or upon the child's 18th birthday, or up to the child's 19th birthday if ordered by the court in order to complete the twelve months of treatment, if the child is charged as a delinquent for an act that would be a felony if committed by an adult.

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. the name of the Office of Juvenile Affairs employee or Juvenile Bureau employee responsible for the intake, supervision, or custody of the child, if adjudicated,

f. the name of the Department of Human Services caseworker, if any, and

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

2. Not later than ten (10) judicial 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, the Office of Juvenile Affairs or Juvenile Bureau, and the child's parent or legal guardian.

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

1. Every ninety (90) calendar days and upon completion or 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, and

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

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, herself 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, the child's intake worker, 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 charge without prejudice.

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.

H. After a hearing held pursuant to 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.

SECTION 8. This act shall become effective January 1, 2016.

Passed the Senate the 21st day of May, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2015.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of May, 2015, at 10:26 o'clock A M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 5th day of June, 2015, at 11:11 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 5th day of June, 2015, at 1:24 o'clock P. M.

By: Chris Morris