An Act

ENROLLED SENATE
BILL NO. 715

By: Smalley and Pittman of the Senate

and

O'Donnell of the House

An Act relating to determinations of competency; amending 22 O.S. 2011, Sections 1175.3, 1175.6a and 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.

SUBJECT: Determination of competency of criminal defendants

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.

B. The court shall hold a hearing on the date provided. At the hearing, the court shall examine the application for determination

of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

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

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

b. In addition, the Developmental Disabilities Services Division of the Department of Human Services shall receive written notice from the district attorney who filed the criminal petition, and be authorized by order of the court to have a psychologist or other appropriate clinician participate with professionals assigned by any other public or private agency in any competency evaluation wherein mental retardation or other developmental disability may be involved. The psychologist or clinician employed, by contract or otherwise, by the Department of Human Services may issue a separate opinion and recommendation to the court.

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

3. If the court determines that the person whose competency is in question may be dangerous as defined in Section 1175.1 of this title, it shall order the person retained in a secure facility until the completion of the competency hearing provided in Section 1175.4 of this title. If the court determines the person may be dangerous as defined in Section 1175.1 of this title because the individual is a person requiring treatment as defined in Section 1-103 of Title

43A of the Oklahoma Statutes, it may commit the person to the custody of the Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination required by this subsection ~~D of this section~~. The person shall be required to undergo examination for a period of time sufficient for the qualified forensic examiner(s) to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination.

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

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

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

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

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

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

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

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

F. Upon completion of the competency evaluation, the Department of Mental Health and Substance Abuse Services or qualified forensic examiner designated by the Department to perform competency examinations shall notify the court of its findings ~~and~~. If the person is in the custody of the Department of Mental Health and

Substance Abuse Services, the person shall be returned to the court in the customary manner within five (5) business days. If the person is not returned within that time, the county in which the proceedings are to be held shall pay the costs of maintaining the person at the institution or facility for the period of time the person remains at the institution or facility in excess of the five-day period.

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

Section 1175.6a A. If the person is found to be incompetent because ~~the person~~ he or she is a person requiring treatment as defined in Section 1-103 of Title 43A of the Oklahoma Statutes, but capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and ~~commit the person to the legal custody of~~ order the Department of Mental Health and Substance Abuse Services to provide treatment, therapy or training which is calculated to allow the person to achieve competency. The Department may designate a willing entity to provide such competency restoration services on behalf of the Department, provided the entity has qualified personnel. The court shall further order the Department to take custody of the individual as soon as a forensic bed becomes available, unless both the Department and the county jail where the person is being held determine that it is in the best interests of the person to remain in the county jail. Such competency restoration services shall begin within a reasonable period of time after the court has determined that the person is not competent to stand trial.

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

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

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

~~a. if~~

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

~~b. if~~;

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

~~c. if~~ or designee;

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

~~d. if~~ title;

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

~~e. if~~ title; or

5. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, and other than the person is mentally retarded as defined in Title 10 of the Oklahoma Statutes, but is

also found to be dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section ~~8~~ 1175.6c of this ~~act~~ title.

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

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

Section 1175.7 A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

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

C. The court may not commit the incompetent person to the custody of the Department of Mental Health and Substance Abuse Services~~, but only where~~ unless the person is a person requiring

treatment as defined by Title 43A of the Oklahoma Statutes~~, or other appropriate state agency, if the court, after the hearing provided in Section 1175.4 of this title, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the court determines that the defendant is dangerous to self or society as a result of being a person requiring treatment as defined by Title 43A of the Oklahoma Statutes~~.

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

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

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

Passed the Senate the 4th day of May, 2015.

Presiding Officer of the Senate

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

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 5th day of May, 2015, at 11:15 o'clock A M.

By: _____

Approved by the Governor of the State of Oklahoma this 11th day of May, 2015, at 2:13 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 11th day of May, 2015, at 5:22 o'clock P. M.

By: C. Benge