

1 ENGROSSED SENATE  
2 BILL NO. 457

By: Griffin of the Senate

and

Nelson of the House

3  
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5  
6 [ child competency proceedings - appointment of  
7 counsel - competency evaluation - report - competency  
8 hearing - plan and reports - dismissal - codification  
9 - effective date ]

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

11 SECTION 1. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 2-2-401.1 of Title 10A, unless  
13 there is created a duplication in numbering, reads as follows:

14 As used in this act:

15 1. "Competent" and "competency" refer to a child's ability to  
16 understand the nature and objectives of a proceeding against the  
17 child or to assist in the child's defense. A child is incompetent  
18 if, due to developmental disability, developmental immaturity,  
19 intellectual disability, or mental illness, the child is presently  
20 incapable of understanding the nature and objective of proceedings  
21 against the child or of assisting in the child's defense;

22 2. "Credentialed forensic evaluator" means a licensed  
23 psychologist, psychiatrist or other physician with necessary  
24 education, training, and experience to perform juvenile competency

1 evaluations, and who has been approved to render such opinions for  
2 the court;

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

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

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

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

18 7. "Proceeding" means any delinquency proceeding under the  
19 Oklahoma Juvenile Code.

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

23 A. 1. At any time prior to or during delinquency proceedings  
24 pursuant to the Oklahoma Juvenile Code, the child's attorney, the

1 district attorney, or the court may raise the issue of a child's  
2 competency to participate in the proceeding. If at the time the  
3 issue of competency is raised the child is not represented by  
4 counsel, the court shall immediately appoint counsel. The court  
5 shall stay all proceedings except to allow the filing of a  
6 delinquency petition.

7 2. In any delinquency proceeding pursuant to the Juvenile Code,  
8 if the child who is the subject of the proceeding is thirteen (13)  
9 years or older and if the child is not otherwise found to be  
10 developmentally disabled, developmentally immature, intellectually  
11 disabled, or mentally ill, there exists a rebuttable presumption  
12 that the child is competent. Such presumption applies only for  
13 making a determination as to whether the child is competent and  
14 shall not be used or applicable for any other purpose.

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

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

22 A. When the district attorney or the child's attorney has  
23 reasonable basis to believe that a child is incompetent to proceed  
24 in the delinquency action, the party shall file a motion for

1 determination of competency. The motion shall state that the child  
2 is incompetent to proceed and shall state facts sufficient to set  
3 forth the reasonable basis to conduct a competency evaluation. If  
4 the court raises the issue sua sponte, the court by written order  
5 shall set forth the reasonable basis that the child is incompetent  
6 to proceed.

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

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

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

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

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

1           1. The court shall provide in its order that the evaluator  
2 shall have access to all relevant confidential and public records  
3 related to the child, including competency evaluations and reports  
4 conducted in prior delinquent proceedings. The court shall provide  
5 to the evaluator a copy of the petition and the names and contact  
6 information for the judge, district attorney, child's attorney, and  
7 parents or legal guardians.

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

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

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

22           A. An evaluation ordered by the court shall be conducted by a  
23 credentialed forensic evaluator.

24

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

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

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

11          c. clinical understanding of child and adolescent  
12 development, and

13          d. familiarity with competency standards in this state.

14          2. The Oklahoma Commission on Children and Youth shall  
15 establish procedures for ensuring the training and qualifications of  
16 individuals approved to conduct juvenile competency evaluations.

17 The Commission shall provide a list of credentialed forensic  
18 evaluators to the Administrative Office of the Courts.

19          B. A court may appoint as evaluator a psychologist,  
20 psychiatrist, or other physician who does not meet the requirements  
21 of subsection A of this section only if exigent circumstances  
22 require the evaluator to have specialized expertise to examine the  
23 child that would not ordinarily be possessed by a psychologist,  
24

1 psychiatrist, or other physician who meets the requirements of a  
2 credentialed forensic evaluator.

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

6 A. The evaluator shall file with the court a written competency  
7 evaluation report within thirty (30) days after the date of the  
8 order of appointment. For good cause shown, the court may extend  
9 the time for filing for a period not to exceed thirty (30) days.  
10 The report shall include the evaluator's opinion as to whether the  
11 child, due to developmental disability, developmental immaturity,  
12 intellectual disability, or mental illness, is currently incapable  
13 of understanding the nature and objective of the proceedings against  
14 the child or of assisting in the child's defense. The report shall  
15 not include the evaluator's opinion as to the details of the alleged  
16 offense as reported by the child, or an opinion as to whether the  
17 child actually committed the offense or could be culpable for  
18 committing the offense. No statement made by a child during an  
19 evaluation or hearing conducted pursuant to this act shall be used  
20 against the child on the issue of responsibility or guilt in  
21 subsequent court proceedings.

22 B. A competency evaluation report shall address the following  
23 questions:  
24

- 1        1. Whether the child is able to understand and appreciate the  
2 charges and their seriousness;
- 3        2. Whether the child is able to consult with an attorney and  
4 rationally and factually assist in his or her defense;
- 5        3. Whether the child can understand and reasonably participate  
6 in the proceedings;
- 7        4. If the answer to question 1, 2 or 3 is no, whether the child  
8 can attain competency within a reasonable time pursuant to Section 7  
9 of this act if provided with a course of treatment, therapy, or  
10 training;
- 11       5. Whether the child poses an imminent threat to the life or  
12 safety of him or herself or others; and
- 13       6. Whether the child is mentally ill or is a minor in need of  
14 treatment as defined by the Inpatient Mental Health and Substance  
15 Abuse Treatment of Minors Act.
- 16       C. If the evaluator concludes that the child's competency is  
17 impaired, but that the child may be rendered competent by reasonable  
18 accommodations, the report shall include recommendations for  
19 reasonable accommodations which the court shall order to assist in  
20 compensating for the competency impairments.
- 21       D. If the evaluator concludes there is a substantial  
22 probability that the child could attain competency within the  
23 periods set forth in subparagraph a of paragraph 3 of subsection C  
24 of Section 7 of this act, the competency evaluation report shall



1 include a recommendation as to the least restrictive setting for  
2 child competency attainment services consistent with the child's  
3 ability to attain competency and the safety of both the child and  
4 the public.

5 E. The competency evaluation report shall also include:

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

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

10 3. Results of mental status examination; and

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

13 F. The court shall provide a copy of each competency evaluation  
14 report it receives to the district attorney and the child's  
15 attorney, and may provide a copy upon request to the child's  
16 parents, legal guardian, and guardian ad litem, if one was  
17 appointed.

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

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

4           A. Not more than fifteen (15) judicial days after receiving the  
5 evaluator's report, the court shall conduct a hearing to determine  
6 the child's competency to participate in the proceeding. The court  
7 may continue the hearing for good cause shown.

8           B. The competency evaluation report shall be admissible in  
9 evidence. The evaluator may be called as a witness and be subject  
10 to cross examination by all parties. If authorized by the court,  
11 hearings held pursuant to this section may be conducted via  
12 teleconference. If the court contacts the evaluator to obtain  
13 clarification of the report contents, the court shall promptly  
14 inform all parties and allow each party to participate in each  
15 contact.

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

21           D. 1. Except as otherwise provided, the court shall make a  
22 written determination as to the child's competency based on a  
23 preponderance of the evidence within ten (10) judicial days after  
24

1 completion of the hearing. The burden of proof shall be on the  
2 moving party.

3 2. The court shall not find a child incompetent to proceed  
4 solely because the child is receiving or has received in-patient  
5 treatment as a voluntary or involuntary mentally ill patient  
6 pursuant to Section 5-501 et seq. of Title 43A of the Oklahoma  
7 Statutes, or is receiving or has received psychotropic or other  
8 medication, even if the child might become incompetent to proceed  
9 without that medication.

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

13 A. After a hearing pursuant to Section 6 of this act, if the  
14 court determines by a preponderance of the evidence that the child  
15 is competent to proceed, the delinquency proceedings shall be  
16 resumed as provided by law.

17 B. After a hearing pursuant to Section 6 of this act, if the  
18 court determines by the preponderance of the evidence that the child  
19 is incompetent to proceed and cannot attain competency within the  
20 period of time application under subparagraph a of paragraph 3 of  
21 subsection C of this section, the court shall dismiss the petition  
22 without prejudice, and take either of the following actions:

23 1. Refer the matter to the Oklahoma Department of Human  
24 Services and request a determination whether a deprived action

1 should be filed in accordance with the Oklahoma Children's Code  
2 alleging that the child is a neglected, abused or dependent child;  
3 or

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

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

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

23 2. The court shall order that the competency attainment  
24 services ordered are provided in the least-restrictive environment,

1 taking into account the public safety and the best interests of the  
2 child. If the child has been released on temporary orders and  
3 refuses or fails to cooperate with the service provider, the court  
4 may modify the orders to require a more appropriate setting.

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

- 9 a. if the services are provided, the child shall not  
10 participate in those services for a period exceeding  
11 six (6) months or upon the child's 18th birthday, or  
12 up to the child's 19th birthday if ordered by the  
13 court in order to complete the six months of  
14 treatment, if the child is charged with an act that  
15 would be a misdemeanor if committed by an adult,
- 16 b. if the services are provided, the child shall not  
17 participate for a period exceeding twelve (12) months  
18 or upon the child's 18th birthday, or up to the  
19 child's 19th birthday if ordered by the court in order  
20 to complete the twelve months of treatment, if the  
21 child is charged as a delinquent for an act that would  
22 be a felony if committed by an adult.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24



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

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

11           3. A dismissal under paragraph 2 of this subsection shall not  
12 preclude a future delinquent child proceeding as provided for under  
13 Title 10A of the Oklahoma Statutes.

14           H. After a hearing held pursuant to subsection G of this  
15 section, the court determines that the child has attained  
16 competency, the court shall proceed with the delinquent child's  
17 proceeding in accordance with the provisions of the Juvenile Code.

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

21           SECTION 8. This act shall become effective January 1, 2016.  
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1 Passed the Senate the 11th day of March, 2015.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2015.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives