

# An Act

ENROLLED HOUSE  
BILL NO. 2312

By: Lawson, Munson and Virgin  
of the House

and

Haste of the Senate

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

SUBJECT: Children

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

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

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

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; and

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

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

Section 2-2-401.2 A. 1. At any time prior to or during delinquency or youthful offender 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 or youthful offender information.

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

3. In any delinquency or youthful offender 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. AMENDATORY Section 3, Chapter 398, O.S.L. 2015 (10A O.S. Supp. 2020, Section 2-2-401.3), is amended to read as follows:

Section 2-2-401.3 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~~ or youthful offender proceeding, 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~~ 2-2-401.2 of this ~~act~~ title; 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 or youthful offender proceedings. The court shall provide to the evaluator a copy of the delinquency petition or youthful offender information 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. AMENDATORY Section 7, Chapter 398, O.S.L. 2015 (10A O.S. Supp. 2020, Section 2-2-401.7), is amended to read as follows:

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

B. After a hearing pursuant to Section ~~6~~ 2-2-401.6 of this ~~act~~ title, 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, 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 (6) 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 (12) months of treatment, if the child is charged as a delinquent or youthful offender 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 or Information,
- 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 or youthful offender charge without prejudice.

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

H. After a hearing held pursuant to subsection G of this section, if the court determines that the child has attained competency, the court shall proceed with the ~~delinquent child's~~ delinquency or youthful offender 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 5. This act shall become effective November 1, 2021.

Passed the House of Representatives the 27th day of April, 2021.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

Passed the Senate the 19th day of April, 2021.

\_\_\_\_\_  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_