

THE CRIMINAL COMPETENCY TRIAL

**KASEY BALDWIN
SPECIAL DISTRICT JUDGE, TULSA
JULY 9, 2026**

WHO CAN START A CRIMINAL COMPETENCY PROCEEDING?

22 OS §1175.2(A)

- Defendant
- Attorney for Defendant
- District Attorney
- The Court
 - At any time on its own without an application
 - May appoint the district attorney for the purpose of proceeding with the application
 - if DA opposes and cites conflict, the court can appoint private counsel compensated by the court fund

HOW IS A CRIMINAL COMPETENCY PROCEEDING INITIATED?

22 OS §1175.2(A) - Application

- Application for determination of competency
 - Example packet with all typical documents included in materials
- Shall allege:
 - Incompetent to undergo further proceedings
 - State **facts** sufficient to raise a doubt as to the competency of the person
 - Oklahoma Court of Criminal Appeals upheld trial court's finding there was insufficient doubt and denial of application in *Davison v. State*, 478 P.3d 462 (2020).
- Any criminal proceedings against defendant shall be suspended.

HOW IS A CRIMINAL COMPETENCY PROCEEDING INITIATED? (CONT'D)

22 OS §1175.2(B) - Notice

- Copy of Application **and** Notice served at least 1 day before 1st hearing
 - Must include statutory information (see materials)
 - Set hearing “as soon as practicable” (22 O.S. §1175.3(a))
- Served upon:
 - Defendant
 - Defendant’s father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the county
 - Upon any of said relatives residing within the state, as ordered by the court
 - The person with whom Defendant may reside, or at whose house the person may be
- Affidavit of Service must be filed with the district Court
 - Party requesting determination has responsibility of notice and service. (*Lynch v. State*, 909 P.2d 800 (Okla. Cr. 1995)).

PRE-EVALUATION COMPETENCY HEARING

“FIRST HEARING”

22 O.S. § 1175.3

- “The court shall hold a hearing on the date provided.”
 - Examine the application
 - Any additional evidence tending to create a doubt may be presented
 - Movant must make a “threshold,” showing of incompetence before evaluation ordered. (See *Bryson v. Ward*, 187 F.3d 1193 (10th Cir. 1999))
 - Violent and abusive behavior alone insufficient to raise issue of competency. (See *Williamson v. State*, 812 P.2d 384, 414 (Okla. Cr. 1991))
- If there is no doubt as to competency, criminal proceedings resume.
- If doubt exists:
 - Order person examined by ODMH or qualified examiner **designated by** ODMH
 - Can order inpatient evaluation if necessary
 - If determine:
 - dangerous, shall order retained in secure facility until completion of “second hearing”
 - “may be dangerous,” may commit to ODMH or any state agency or private facility
 - Shall impose reasonable time limitation for examination

IF DEVELOPMENTAL OR INTELLECTUAL DISABILITY INVOLVED:

22 O.S. 1175.3(D)(b)

- In **addition** to ODMH eval, the Development Disabilities Services Division (DDSD) and the Office of Public Guardian of the Department of Human Services(DHS) shall receive notice
- DDSD/DHS are authorized by order of the court to have a psychologist or other appropriate clinician **participate with** professionals assigned by other public/private agency in evaluation
- May issue **separate opinion** and recommendation to the court
- Office of Public Guardian shall have standing (see also 22 O.S. 1175.4(A))

POST-EVALUATION COMPETENCY HEARING

“SECOND HEARING” / “PECH”

22 O.S. § 1175.4

- Shall be held within 30 days after examiner determination
- Presumption = competent
- Burden = Preponderance of the evidence
- Default is non-jury trial
 - No affirmative waiver of right to jury necessary
 - See *Hammon v. State*, 898 P.2d 1287 (1995); and *Nolen v. State*, PCD-2018-215 (Okla. Cr. 2022)(unpublished)
- Jury Trial if:
 - the court deems necessary
 - Relative/friend/household member demands, or
 - Defendant demands
 - See also 22 O.S. § 1175.2(B)(2) and (6)

PECH JURY TRIAL

22 O.S. 1175.4

- “shall” schedule within **72 hours** of request
 - excluding weekends and legal holidays
 - Or within as much additional time as requested by **defendant’s** attorney, upon good cause shown
- 6 persons, qualified as normal jurors
 - Only 5 jurors required to return verdict (*Miller v. State*, 751 P.2d 733, 738 (Okla. Cr. 1988))
- Summoned
- Jury selection in the manner provided by law
- Jurors shall receive fees for attendance and mileage as are allowed by law
- Proposed judicial opening and closing instructions included in materials

PECH HEARING - DEFENDANT

22 O.S. § 1175.4

- Defendant “shall have the right to be present,”
 - unless defendant’s presence makes it impossible to conduct the hearing in a reasonable manner
 - May not decide in advance of the hearing, solely on the basis of the doctor(s)
 - Must find clear and convincing evidence that alternatives to exclusion were attempted before removing defendant
- No statement, admission or confession made by Defendant during competency examination may be used for any purpose other than competency
- Defendant may not be called to testify against his will unless Defendant initiated competency application (See 22 O.S. § 1175.2(B)(3))

PECH HEARING – EVIDENCE

22 O.S. § 1175.4

- Witnesses subject to cross examination as normal
- Testimony via telephone or other electronic means allowed if stipulated by DA, defendant’s attorney, and court
- Determination “shall include” considerations of all reports prepared by qualified examiner (including DDS/DHS eval ordered, if any)
- Requires more than reading clinical reports (*Marquez-Burrola v. State*, 157 P.3d 749 (Okla. Cr. 2007)):
 - Assessing knowledge and credibility of expert
 - Assessing observations of lay witnesses
 - Personally observing defendant’s demeanor (See also *Grant v. State*, 205 P.3d 1 (Okla. Cr. 2009))
 - Factfinder doesn’t have to agree with expert. (See *Ryder v. State*, 83 P.3d 856 (Okla. Cr. 2004))

PECH OUTCOME: COMPETENT

Criminal proceedings resume. (22 O.S. 1175.6(1))

PECH OUTCOME: INCOMPETENT AND INOT/DANGEROUS

22 O.S. 1175.6a(A) capable of achieving competence with treatment within a reasonable period of time

- Suspend criminal proceedings
- Order OMDH to provide treatment & take custody as soon as bed available
- ODMH may designate willing entity, provided they have qualified personnel`
 - See also 22 O.S. 1175.7
- Restoration services shall begin within reasonable period of time after determined incompetent
- ODMH shall make periodic reports to the court
- “shall remain in the custody of the county jail ...”
- Proposed order included in materials

PECH OUTCOME: INCOMPETENT BUT NOT INOT, NOT DANGEROUS

22 O.S. § 1175.6b(B)

- Shall suspend criminal proceedings
- Either:
 - refer the person to DHS for consideration of voluntary assistance, or
 - Cannot involuntarily commit to legal custody of DHS or any of its facilities (22 O.S § 1175.7(E))
 - conditionally release the person
 - Written plan for services shall be prepared by DHS and filed with the court
 - Shall specify conditions of release and shall direct appropriate agencies or persons to submit annual reports regarding compliance and progress
 - Defendant shall agree in writing to free transmission of all pertinent information among treatment providers, district attorney, law enforcement, and court personnel & execute any necessary releases
 - Order shall provide notice release may be revoked for good cause

PECH OUTCOME: INCOMPETENT, INTELLECTUALLY DISABLED, AND DANGEROUS

22 O.S. 1175.6b(A)

- Shall suspend criminal proceedings
- Place into custody of Office of Public Guardian who shall act within powers set forth in Oklahoma Public Guardianship Act
- Placement within 6 months of order
- Reports to court at least every 6 months
- See also 22 O.S. 1175.6c
- Cannot commit to OMDH unless INOT (22 O.S. § 1175.7(C))

PECH OUTCOME: INCOMPETENT, INOT, & UNABLE REGAIN WITHIN REASONABLE PERIOD OF TIME

22 O.S. 1175.6a(D)

- Commence civil commitment proceedings under Title 43A
- Shall dismiss without prejudice
- Statute of limitations for criminal charge shall be tolled:
 - if committed to ODMH pursuant to civil commitment
 - until the defendant discharged from ODMH

PECH OUTCOME: INCOMPETENT AND DANGEROUS BUT NOT INOT

22 O.S. 1175.6c

- “dangerous” is defined as “a person requiring treatment” under 22 O.S. 1175.1(3)
- Shall suspend criminal proceedings
- Refer matter to DHS and ODMH to determine appropriate placement
 - Jointly establish procedure to determine appropriate placement
 - Jointly submit recommendation to the court

RESTORATION OF COMPETENCY: REPORT OPINES RESTORED

22 O.S. 1175.6a or 22 O.S. 1175.6b

- Shall schedule hearing within 20 days
- Suggests statutory right to a jury trial at restoration hearing (“If found competent by the court or a jury after such rehearing”)
 - See also *Lillard v. State*, 852 P.2d 756 (Okla. Cr. 1993)
- Outcomes include:
 - Finding restored and resume criminal proceedings
 - Finding still incompetent (no change) and continue treatment
 - Finding still incompetent but with different specifics and issuing new orders
- See also 22 O.S. 1175.8

RESTORATION OF COMPETENCY: REASONABLE PERIOD OF TIME EXPIRED

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22 O.S. 1175.6a(E) – **amended 11/1/2025**

- After expiration of reasonable period of time, schedule hearing within 30 days
- As of 11-1-2025, RPOT no longer includes any period of time defendant refuses meds (22 O.S. 1175.1(7))
- ODMH shall submit report no less than 15 days prior to the hearing with specific information
- Outcomes of hearing:
 - Restored – criminal proceedings resume
 - Not restored – now you must determine whether additional restoration services are likely to be beneficial by preponderance of evidence:
 - Likely: order person remain or be transferred to ODMH custody for an additional period of time not to exceed the lesser of an additional 2 years or the maximum sentence specified for the most serious offense
 - Not likely:
 - Commence civil commitment under title 43A
 - Shall dismiss without prejudice
 - SOL tolled if committed until defendant's discharge
- Sample Order Setting Final Hearing included in materials.

OTHER CONSIDERATIONS

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- Special judges can handle competency proceedings. (*Rogers v. Lansdown*, 829 P.2d 687, 688 (Okla. Cr. 1992))
- Criminal competency considers present ability. (22 O.S. § 1175.1(1))
 - Differs from not guilty by reason of insanity (time of offense).
 - Loss of memory alone not enough. (See *Siah v. State*, 837 P.2d 485, 487 (Okla. Cr. 1992) and OUJI-CR 11-4)
- Can defendant waive/withdraw PECH?
 - Interpreting pre-1991 statute says you can: *Kiser v. State*, 782 P.2d 405 (Okla. Cr. 1989); *Castro v. State*, 871 P.2d 433 (Okla. Cr. 1994)
 - Our statute implies you cannot: “A hearing to determine the competency of the person whose competency is in question **shall be held** within thirty (30) days after the qualified forensic examiner . . .” 22 O.S. § 1175.4(A).
 - *Le v. State*, 947 P.2d 535 (Okla. Cr. 1997)
 - “This part of the competency proceedings is not an optional requirement . . .” *Thomas v. State*, 777 P.2d 399, 400 (Okla. Cr. 1989)
 - “[Statute] mandates that a competency hearing be conducted after the accused has been examined.” *Clayton v. State*, 840 P.2d 18 (Okla. Cr. 1992)
- No duty to fund indigent defendant’s own competency expert. (*Marquez-Burrola v. State*, 157 P.3d 749 (Okla. Cr. 2007))
- Does not apply to juvenile proceedings. (See *G.J.I. v. State*, 778 P.2d 485 (Okla. Cr. 1989))

QUESTIONS?

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