

1 ENGROSSED SENATE
2 BILL NO. 1738

By: Leewright of the Senate

3 and

4 Hilbert of the House

5
6 An Act relating to death penalty procedure; defining
7 term; establishing certain presumption; establishing
8 procedures for determination of mental competency to
9 be executed; authorizing attorney to file certain
10 motion; specifying information to be included in
11 certain motion; requiring Court of Criminal Appeals
12 to remand issue of mental competency to trial court;
13 authorizing issuance of stays of execution; requiring
14 evidentiary hearing; requiring examination under
15 certain circumstances; providing for consent to
16 certain examination; providing for certain waiver;
17 providing instructions for certain examiner;
18 requiring submission of certain reports; requiring
19 certain hearing; establishing burden of proof for
20 certain showing; requiring certain notice; requiring
21 consultation for determination of certain
22 confinement; authorizing designation of entity to
23 provide certain services; requiring hearing under
24 certain circumstances; requiring stay of execution to
be vacated under certain circumstances; requiring
setting of execution date; providing procedures for
intervening change in circumstances; requiring
filings to be made in good faith; repealing 22 O.S.
2021, Sections 1005, 1006, 1007, and 1008, which
relate to suspension of execution and determination
of insanity; providing for codification; and
providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1005.1 of Title 22, unless there
24 is created a duplication in numbering, reads as follows:

1 A. For purposes of this act, "mentally incompetent to be
2 executed" means that because of a mental condition the person is
3 presently unable to have a rational understanding:

4 1. Of the reason he or she is being executed; and

5 2. That he or she is to be executed and that execution is
6 imminent.

7 B. There shall be a presumption that a person who has received
8 a judgment of death is mentally competent to be executed.

9 C. If, after the Attorney General files a motion to set an
10 execution date, the person's attorney has good reason to believe
11 that the person may be mentally incompetent to be executed, the
12 attorney may file a motion in the Court of Criminal Appeals setting
13 forth the facts giving rise to the belief that the person may be
14 mentally incompetent to be executed and requesting the court to
15 order that the person be examined for mental competency to be
16 executed.

17 D. A motion alleging that a person is mentally incompetent to
18 be executed shall be filed initially when filing a written response
19 to the motion of the Attorney General to set an execution date. The
20 person shall have seven (7) days from the filing of the motion of
21 the Attorney General to file a response and raise the issue of
22 mental incompetency.

23 E. A motion alleging that a person is mentally incompetent to
24 be executed shall identify the proceeding in which the person was

1 convicted and shall clearly set forth alleged facts in support of
2 the assertion that the person is presently mentally incompetent to
3 be executed. The person shall attach affidavits, records, or other
4 evidence supporting such allegations or shall state a reason for
5 which such items are not attached. The person shall identify any
6 previous proceeding in which the person challenged his or her
7 competency in relation to the conviction and judgment of death
8 including any challenge to the person's competency to be executed,
9 competency to stand trial, or sanity at the time of the offense.

10 F. In the order of the Court of Criminal Appeals setting the
11 execution date, the Court shall remand the issue of mental
12 competency to be executed to the trial court where the person was
13 originally tried and sentenced. Mental competency of a person to be
14 executed shall not be considered unless and until an execution date
15 has been scheduled.

16 G. In addition to the authority set forth in subsection C of
17 Section 1001.1 of Title 22 of the Oklahoma Statutes, the Court of
18 Criminal Appeals may issue stays of execution as necessary to permit
19 inquiry into the person's mental competency to be executed.

20 H. On receipt of the remand, the trial court shall hold an
21 evidentiary hearing to determine whether the person has raised a
22 substantial doubt as to the person's competency to be executed. The
23 Attorney General shall represent the state at the evidentiary
24 hearing. If the trial court determines the person has failed to

1 make a substantial showing that he or she is mentally incompetent to
2 be executed, the court shall deny the motion and the execution shall
3 proceed. If the trial court determines the person has made a
4 substantial showing that he or she is mentally incompetent to be
5 executed, the trial court shall order an examination of the person
6 by the Department of Mental Health and Substance Abuse Services or
7 by a qualified forensic examiner designated by the Department of
8 Mental Health and Substance Abuse Services. By filing the motion,
9 the person shall be deemed to consent to submit to an examination as
10 required by this section for the purpose of assessment of mental
11 competency to be executed. In addition, the person waives any claim
12 of privilege with respect to, and consents to the release of, all
13 mental health and medical records relevant to whether the person is
14 mentally incompetent to be executed. If the person refuses to be
15 examined by the state's expert, the trial court shall not consider
16 any expert evidence offered by the person concerning his or her
17 competency.

18 I. The qualified forensic examiner or examiners shall receive
19 instructions to examine the person to determine whether the person
20 has a rational understanding:

- 21 1. Of the reason he or she is being executed; and
- 22 2. That he or she is to be executed and that execution is
23 imminent.

24

1 J. Within a time ordered by the trial court, the qualified
2 forensic examiner or examiners shall provide copies of their reports
3 to the attorney representing the state, the attorney representing
4 the person, and the trial court.

5 K. After all examinations are complete, the trial court shall
6 conduct a hearing to determine whether the person is mentally
7 competent to be executed. The person shall overcome the presumption
8 that he or she is competent to be executed by a preponderance of the
9 evidence.

10 L. If the trial court finds that the person is mentally
11 incompetent to be executed, the trial court shall issue notice to
12 the Court of Criminal Appeals of such findings at which time the
13 Court of Criminal Appeals shall issue a stay of execution. Upon
14 issuance of such stay, the trial court shall order that the inmate
15 be reexamined after a reasonable period, not to exceed four (4)
16 months, by a qualified forensic examiner or examiners as necessary
17 to determine whether the person remains mentally incompetent to be
18 executed. If the trial court finds that the person is competent to
19 be executed, the warden shall proceed to execute the judgment as
20 certified in the warrant.

21 M. If a person is found to be mentally incompetent to be
22 executed, the Department of Mental Health and Substance Abuse
23 Services shall determine through consultation with the Department of
24 Corrections, the place for the person to be held for safe

1 confinement until his or her competency is restored. The trial
2 court shall order the Department of Mental Health and Substance
3 Abuse Services to provide treatment, therapy, or training for the
4 person to achieve competency. The Department of Mental Health and
5 Substance Abuse Services may designate an entity with qualified
6 personnel to provide competency restoration services on behalf of
7 the Department.

8 N. If a person is determined by a qualified forensic examiner
9 or examiners to have regained his or her mental competency, the
10 state shall file a motion to determine mental competency to be heard
11 by the trial court where the person was originally tried. After
12 such hearing, if the person is found to be mentally competent to be
13 executed, the trial court shall notify the Court of Criminal Appeals
14 which shall vacate the stay of execution. If the prior execution
15 date has expired, a new execution date shall be set as provided in
16 subsection F of Section 1001.1 of Title 22 of the Oklahoma Statutes.

17 O. If any intervening change in the mental competency of the
18 person to be executed occurs after the seven (7) day deadline to
19 initiate proceedings required pursuant to subsection D of this
20 section, the person may file a motion alleging he or she is mentally
21 incompetent to be executed with the Court of Criminal Appeals. An
22 intervening change shall be a condition that has not and could not
23 have been presented in a timely motion because the factual basis for
24 the claim was not ascertainable through the exercise of reasonable

1 diligence. If the Court of Criminal Appeals determines that an
2 intervening change has occurred, the procedures set forth in this
3 section shall apply.

4 P. Any filing made pursuant to this section shall be made in
5 good faith as provided in Rule 9.7(C), Rules of the Court of
6 Criminal Appeals, of this title, Ch. 18, App.

7 SECTION 2. REPEALER 22 O.S. 2021, Sections 1005, 1006,
8 1007, and 1008, are hereby repealed.

9 SECTION 3. This act shall become effective November 1, 2022.
10 Passed the Senate the 14th day of March, 2022.

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12 _____
13 Presiding Officer of the Senate

14 Passed the House of Representatives the ____ day of _____,
15 2022.

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17 _____
18 Presiding Officer of the House
19 of Representatives