

An Act

ENROLLED SENATE
BILL NO. 1738

By: Leewright of the Senate

and

Hilbert of the House

An Act relating to death penalty procedure; defining term; establishing certain presumption; establishing procedures for determination of mental competency to be executed; authorizing attorney to file certain motion; specifying information to be included in certain motion; requiring Court of Criminal Appeals to remand issue of mental competency to trial court; authorizing issuance of stays of execution; requiring evidentiary hearing; requiring examination under certain circumstances; providing for consent to certain examination; providing for certain waiver; providing instructions for certain examiner; requiring submission of certain reports; requiring certain hearing; establishing burden of proof for certain showing; requiring certain notice; requiring consultation for determination of certain confinement; authorizing designation of entity to provide certain services; requiring hearing under 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.

SUBJECT: Death penalty procedure

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

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

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

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

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

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

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

E. A motion alleging that a person is mentally incompetent to be executed shall identify the proceeding in which the person was convicted and shall clearly set forth alleged facts in support of the assertion that the person is presently mentally incompetent to be executed. The person shall attach affidavits, records, or other evidence supporting such allegations or shall state a reason for which such items are not attached. The person shall identify any previous proceeding in which the person challenged his or her

competency in relation to the conviction and judgment of death including any challenge to the person's competency to be executed, competency to stand trial, or sanity at the time of the offense.

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

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

H. On receipt of the remand, the trial court shall hold an evidentiary hearing to determine whether the person has raised a substantial doubt as to the person's competency to be executed. The Attorney General shall represent the state at the evidentiary hearing. If the trial court determines the person has failed to make a substantial showing that he or she is mentally incompetent to be executed, the court shall deny the motion and the execution shall proceed. If the trial court determines the person has made a substantial showing that he or she is mentally incompetent to be executed, the trial court shall order an examination of the person by the Department of Mental Health and Substance Abuse Services or by a qualified forensic examiner designated by the Department of Mental Health and Substance Abuse Services. By filing the motion, the person shall be deemed to consent to submit to an examination as required by this section for the purpose of assessment of mental competency to be executed. In addition, the person waives any claim of privilege with respect to, and consents to the release of, all mental health and medical records relevant to whether the person is mentally incompetent to be executed. If the person refuses to be examined by the state's expert, the trial court shall not consider any expert evidence offered by the person concerning his or her competency.

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

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

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

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

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

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

M. If a person is found to be mentally incompetent to be executed, the Department of Mental Health and Substance Abuse Services shall determine through consultation with the Department of Corrections, the place for the person to be held for safe confinement until his or her competency is restored. The trial court shall order the Department of Mental Health and Substance Abuse Services to provide treatment, therapy, or training for the person to achieve competency. The Department of Mental Health and Substance Abuse Services may designate an entity with qualified personnel to provide competency restoration services on behalf of the Department.

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

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

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

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

SECTION 3. This act shall become effective November 1, 2022.

Passed the Senate the 14th day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of April, 2022.

Presiding Officer of the House
of Representatives

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: _____