

1 **SENATE FLOOR VERSION**

2 February 22, 2022

3 SENATE BILL NO. 1738

By: Leewright of the Senate

4 and

5 Hilbert of the House

6
7
8 An Act relating to death penalty procedure; defining
9 term; establishing certain presumption; establishing
10 procedures for determination of mental competency to
11 be executed; authorizing attorney to file certain
12 motion; specifying information to be included in
13 certain motion; requiring Court of Criminal Appeals
14 to remand issue of mental competency to trial court;
15 authorizing issuance of stays of execution; requiring
16 evidentiary hearing; requiring examination under
17 certain circumstances; providing for consent to
18 certain examination; providing for certain waiver;
19 providing instructions for certain examiner;
20 requiring submission of certain reports; requiring
21 certain hearing; establishing burden of proof for
22 certain showing; requiring certain notice; requiring
23 consultation for determination of certain
24 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.

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

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

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

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

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

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

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

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

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

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

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

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1 I. The qualified forensic examiner or examiners shall receive
2 instructions to examine the person to determine whether the person
3 has 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 J. Within a time ordered by the trial court, the qualified
8 forensic examiner or examiners shall provide copies of their reports
9 to the attorney representing the state, the attorney representing
10 the person, and the trial court.

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

16 L. If the trial court finds that the person is mentally
17 incompetent to be executed, the trial court shall issue notice to
18 the Court of Criminal Appeals of such findings at which time the
19 Court of Criminal Appeals shall issue a stay of execution. Upon
20 issuance of such stay, the trial court shall order that the inmate
21 be reexamined after a reasonable period, not to exceed four (4)
22 months, by a qualified forensic examiner or examiners as necessary
23 to determine whether the person remains mentally incompetent to be
24 executed. If the trial court finds that the person is competent to

1 be executed, the warden shall proceed to execute the judgment as
2 certified in the warrant.

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

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

23 O. If any intervening change in the mental competency of the
24 person to be executed occurs after the seven (7) day deadline to

1 initiate proceedings required pursuant to subsection D of this
2 section, the person may file a motion alleging he or she is mentally
3 incompetent to be executed with the Court of Criminal Appeals. An
4 intervening change shall be a condition that has not and could not
5 have been presented in a timely motion because the factual basis for
6 the claim was not ascertainable through the exercise of reasonable
7 diligence. If the Court of Criminal Appeals determines that an
8 intervening change has occurred, the procedures set forth in this
9 section shall apply.

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

13 SECTION 2. REPEALER 22 O.S. 2021, Sections 1005, 1006,
14 1007, and 1008, are hereby repealed.

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
17 February 22, 2022 - DO PASS

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