

BILL SUMMARY
2nd Session of the 58th Legislature

Bill No.:	SB 1738
Version:	Engrossed
Request Number:	
Author:	Rep. Hilbert
Date:	4/4/2022
Impact:	No direct fiscal impact anticipated

Research Analysis

SB 1738 modifies procedures for the determination of mental competency of a person to be executed. The measure defines “mentally incompetent to be executed” to mean that because of a mental condition the person is presently unable to have a rational understanding of the reason he or she is being executed; and that he or she is to be executed and that execution is imminent. There is to be a presumption that a person who has received a judgment of death is mentally competent to be executed. The measure provides that after the Attorney General has filed a motion to set the execution date, the person’s attorney may file a motion within 7 days of the Attorney General’s filing 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 an examination of the person. Motions claiming incompetency must identify the proceeding in which the person was convicted and clearly set forth the facts in support of the assertion.

The measure directs the Court of Criminal Appeals to remand the issue of mental competency to be executed to the trial court where the person was originally tried and sentenced. Mental competency to be executed is not to be considered until a date of execution is set. The Court of Criminal Appeals may issue stays of execution to permit inquiry into the person’s mental competency. After receiving the remand, the trial court that originally tried and sentenced the person is to 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 is to represent the state in the hearings. If the court determines there is insufficient evidence of mental incompetency, the motion is to be denied, and the execution is to proceed. The court must order an examination of the person by the Department of Mental Health and Substance Abuse Services if the court determines there is sufficient evidence. Upon agreeing to the examination, the person must waive any claim of privilege with respect to, and consent to the release of, all mental health and medical records relevant to whether the person is mentally incompetent to be executed.

A qualified forensic examiner from the Department of Mental Health and Substance Abuse Services is to determine whether the person understands the reason for his or her execution and whether he or she understands the execution is imminent. The examiner is to provide a report to the court within a time ordered by the court. After all examinations are complete, the trial court is to conduct a hearing to determine whether the person is mentally competent to be executed. If the preponderance of evidence shows the person is mentally incompetent, the presumption of competency to be executed shall be overcome. A stay of execution is to be issued by the Court of Criminal Appeals until such time as the person is deemed to be mentally competent. The person may be reexamined by a qualified forensic examiner within 4 months to determine if the person remains mentally incompetent to be executed. If the trial court finds that the person is competent to be executed, the warden is to proceed to execute the judgment as certified in the warrant.

When a person is found mentally incompetent to be executed, the Department of Mental Health and Substance Abuse Services in consultation with the Department of Corrections is to determine a place of confinement until competency is restored. If a qualified forensic examiner determines that a person has regained competency, the state is to file a motion with the trial court to determine mental competency. If the person is found mentally competent to be executed, the trial court is to notify the Court of Criminal Appeals to vacate the stay of execution.

The measure repeals:

[22 O.S. Section 1005](#)

[22 O.S. Section 1006](#)

[22 O.S. Section 1007](#)

[22 O.S. Section 1008](#)

Prepared By: Brad Wolgamott

Fiscal Analysis

The measure, as engrossed, would repeal [22 O.S. § 1005](#), [1006](#), [1007](#), and [1008](#).

The measure, as engrossed, would create new law that would provide a process for the determination of mental competency for individuals subject to the death penalty. The provisions of the measure would apply after the Office of the Attorney General has filed a motion with the Court of Criminal Appeals to set a date for execution.

Upon review, no direct fiscal impact to the state is anticipated from passage of the measure. The modifications to the process for determination of mental competency do not create a need for additional appropriations.

Prepared By: Clayton Mayfield

Other Considerations

None.