

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 HOUSE BILL 1693

By: Worthen

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending
8 Section 1, Chapter 168, O.S.L. 2022 (22 O.S. Supp.
9 2024, Section 1005.1), which relates to death penalty
10 procedures for the mentally incompetent; clarifying
11 evidentiary hearing requirements; specifying time
12 limitation for the submission of certain reports;
13 directing wardens to proceed with execution under
14 certain circumstances; allowing new execution dates
15 to be set; modifying and establishing procedures for
16 persons deemed mentally incompetent to be executed;
17 applying provisions of the Criminal Discovery Code
18 where relevant; prohibiting proceedings from being
19 filed under seal; making amendatory provisions
20 retroactive; and providing an effective date.

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

22 SECTION 1. AMENDATORY Section 1, Chapter 168, O.S.L.
23 2022 (22 O.S. Supp. 2024, Section 1005.1), is amended to read as
24 follows:

Section 1005.1. 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

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

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

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

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

19 E. A motion alleging that a person is mentally incompetent to
20 be executed shall identify the proceeding in which the person was
21 convicted and shall clearly set forth alleged facts in support of
22 the assertion that the person is presently mentally incompetent to
23 be executed. The person shall attach affidavits, records, or other
24 evidence supporting such allegations or shall state a reason for

1 which such items are not attached. The person shall identify any
2 previous proceeding in which the person challenged his or her
3 competency in relation to the conviction and judgment of death
4 including any challenge to the ~~person's~~ competency of the person to
5 be executed, competency to stand trial, or sanity at the time of the
6 offense.

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

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

18 H. On receipt of the remand, the trial court shall hold an
19 evidentiary hearing to determine whether the person has raised a
20 substantial doubt as to the ~~person's~~ competency of the person to be
21 executed. Unless the Court of Criminal Appeals issues a stay of
22 execution, the hearing shall be held and a decision shall be
23 rendered before the scheduled execution date of the person. The
24 Attorney General shall represent the state at the evidentiary

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

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

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

1 J. Within a time ordered by the trial court not to exceed
2 forty-five (45) days, the qualified forensic examiner or examiners
3 shall provide copies of their reports to the attorney representing
4 the state, the attorney representing the person, and the trial
5 court.

6 K. After all examinations are complete, the trial court shall
7 conduct a hearing within thirty (30) days to determine whether the
8 person is mentally competent to be executed. The person shall
9 overcome the presumption that he or she is competent to be executed
10 by a preponderance of the evidence.

11 L. If the trial court finds that the person is competent to be
12 executed, the warden shall proceed to execute the judgment as
13 certified in the warrant. If the prior execution date has expired
14 or the Court of Criminal Appeals has issued a stay, a new execution
15 date shall be set as provide in subsection F of Section 1001.1 of
16 this title.

17 M. If the trial court finds that the person is mentally
18 incompetent to be executed, the following procedures shall be
19 followed:

20 1. The trial court shall issue notice to the Court of Criminal
21 Appeals of such findings at which time the Court of Criminal Appeals
22 shall issue a stay of execution if one has not already been entered.
23 ~~Upon issuance of such stay, the trial court shall order that the~~
24 ~~inmate be reexamined after a reasonable period, not to exceed four~~

1 ~~(4) months, by a qualified forensic examiner or examiners as~~
2 ~~necessary to determine whether the person remains mentally~~
3 ~~incompetent to be executed. If the trial court finds that the~~
4 ~~person is competent to be executed, the warden shall proceed to~~
5 ~~execute the judgment as certified in the warrant.~~

6 ~~M. If a person is found to be mentally incompetent to be~~
7 ~~executed,~~

8 2. The trial court shall also order the Department of Mental
9 Health and Substance Abuse Services ~~shall~~ to determine through
10 consultation with the Department of Corrections, the place for the
11 person to be held for safe confinement until his or her competency
12 is restored.

13 3. The trial court shall further order the Department of Mental
14 Health and Substance Abuse Services to provide treatment, therapy,
15 or training for the person to achieve competency. The Department of
16 Mental Health and Substance Abuse Services may designate an entity
17 with qualified personnel to provide competency restoration services
18 on behalf of the Department. Competency restoration services shall
19 begin within no more than thirty (30) days after the order issued by
20 the trial court.

21 ~~N. If a person is determined by~~

22 4. The Department of Mental Health and Substance Abuse
23 Services, or a qualified forensic examiner ~~or examiners to have~~
24 regained his or her designated by the Department, shall reevaluate

1 the mental competency, the state shall file a motion to determine
2 mental of the person to be executed no more than four (4) months
3 after competency to be heard by the trial court where the person was
4 originally tried restoration services have commenced. A copy of the
5 report following reevaluation shall be provided to the attorney
6 representing the state, the attorney representing the person, and
7 the trial court. If the qualified forensic examiner finds the
8 person to be mentally competent to be executed, the trial court
9 shall hold a hearing to determine whether the person is mentally
10 competent to be executed within forty-five (45) days after receipt
11 of the report. The state must overcome by competent evidence a
12 rebuttable presumption of continued incompetence.

13 5. After such hearing, if the person is found to be mentally
14 competent to be executed, the trial court shall notify the Court of
15 Criminal Appeals which shall vacate the stay of execution. The
16 warden shall proceed to execute the judgment as certified in the
17 warrant. If the prior execution date has expired, a new execution
18 date shall be set as provided in subsection F of Section 1001.1 of
19 Title 22 of the Oklahoma Statutes this title.

20 6. If the trial court determines that the person remains
21 mentally incompetent to be executed, the trial court shall enter an
22 order directing the Department of Mental Health and Substance Abuse
23 Services to continue to provide treatment, therapy, or training for
24 the person to achieve competency. The Department may designate an

1 entity with qualified personnel to provide competency restoration
2 services on behalf of the Department.

3 7. The entity providing competency restoration services shall
4 monitor the progress of the person and immediately provide written
5 notification to the attorney representing the state, the attorney
6 representing the person, and the trial court if it appears the
7 person facing execution may have regained mental competency to be
8 executed. Upon receipt of such notice, the trial court shall order
9 the Department of Mental Health and Substance Abuse Services, or a
10 qualified forensic examiner designated by the Department, to
11 immediately reevaluate the mental competency of the person to be
12 executed and submit a report within thirty (30) days of the order.
13 The trial court shall then schedule an evidentiary hearing, to be
14 held within thirty (30) days, to determine whether the person is
15 mentally competent to be executed. The state must overcome by
16 competent evidence a rebuttable presumption of continued
17 incompetence.

18 8. After the hearing, if the person is found to be mentally
19 competent to be executed, the trial court shall notify the Court of
20 Criminal Appeals which shall vacate the stay of execution. The
21 warden shall proceed to execute the judgment as certified in the
22 warrant. If the prior execution date has expired, a new execution
23 date shall be set as provided in subsection F of Section 1001.1 of
24 this title.

1 9. If the person is found not mentally competent to be
2 executed, restoration services shall continue as provided in
3 paragraphs 3 and 4 of this subsection. The entity providing
4 competency restoration services shall prepare periodic reports,
5 every six (6) months, indicating what services are being provided
6 and the response of the person, if any, to treatment. These reports
7 shall be provided to the attorney representing the state, the
8 attorney representing the person, and the trial court. The entity
9 providing competency restoration services shall be under a
10 continuing duty to comply with the provisions of paragraph 7 of this
11 subsection.

12 N. The provisions of the Criminal Discovery Code, Section 2002
13 of this title, shall apply, as relevant, to evidentiary hearings
14 conducted under the provisions of this section.

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

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

6 Q. No portion of the record in proceedings under the provisions
7 of this section shall be filed under seal.

8 R. Upon the effective date of this act, any amendments made to
9 the provisions of this section shall be applied retroactively.

10 SECTION 2. This act shall become effective November 1, 2025.

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