

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2268

BY: BENSON, CROCKER, JOHNSON
(Rob), MAXEY, SETTLE,
WEESE, WEBB, BOYD, BRYANT,
COLEMAN, COTNER, DUNLAP,
GATES, GLOVER, GREENWOOD,
MADDUX (Elmer), MITCHELL,
POPE, SATTERFIELD, SMITH
(Bill), TYLER and VAUGHN
(Ray) of the HOUSE

and

HOBSON of the SENATE

COMMITTEE SUBSTITUTE AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING
22 O.S. 1991, SECTIONS 1001.1 AND 1015, WHICH RELATE TO EXECUTION OF
JUDGMENT WHERE SENTENCE OF DEATH IS IMPOSED; MODIFYING DATE FOR
EXECUTION OF JUDGMENT WHERE SENTENCE OF DEATH IS IMPOSED; PROVIDING
THAT EXECUTION OF JUDGMENT SHALL BE AT THE DIRECTION OF THE WARDEN
OF THE OKLAHOMA STATE PENITENTIARY; REPEALING 22 O.S. 1991, SECTIONS
1012 AND 1013, WHICH RELATE TO THE DUTY OF THE COURT AND THE SHERIFF
IF JUDGMENT IS NOT EXECUTED; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1001.1, is
amended to read as follows:

Section 1001.1 A. The execution of the judgment in cases where sentence of death is imposed shall be ordered by the Court of Criminal Appeals to be carried out sixty (60) days after the date the last appeal allowed by state or federal law is decided, unless a stay of execution is granted by a court of competent jurisdiction or the Governor defendant fails to meet any of the following time conditions:

1. If a defendant does not file a petition for writ of certiorari in the United States Supreme Court within ninety (90) days from the issuance of the mandate in the original state direct appeal;

2. If a defendant does not file the first application for post-conviction relief in the state district court within sixty (60) days of a denial of certiorari or from a decision by the United States Supreme Court from his direct appeal, or from the expiration date of the time for filing a petition for writ of certiorari with the United States Supreme Court;

3. If a defendant does not file an appeal to the Oklahoma Court of Criminal Appeals from a denial of state post-conviction relief within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of filing of the notice of appeal;

4. If a defendant does not file a writ of certiorari to the United States Supreme Court within ninety (90) days from a denial of state post-conviction relief by the Oklahoma Court of Criminal Appeals;

5. If a defendant does not file the first petition for a federal writ of habeas corpus within sixty (60) days from a denial of his certiorari petition or from a decision by the United States Supreme Court from post-conviction relief;

6. If a defendant does not file an appeal in the United States Court of Appeals for the Tenth Circuit from a denial of a federal writ of habeas corpus within seventy (70) days; or

7. If a defendant does not file a petition for writ of certiorari with the United States Supreme Court from a denial of the appeal of the federal writ of habeas corpus within ninety (90) days.

B. The filing of a petition for rehearing in any federal court shall not serve to stay the execution dates or the time restraints set forth in the above section unless the defendant makes the showing set forth in subsection C of this section. The provisions of subsection A do not apply to second or subsequent petitions or appeals filed in any court. The filing of a second or subsequent petition or appeal in any court does not prevent the setting of an execution date.

C. When an action challenging the conviction or sentence of death is pending before it, a district court of the state or the Court of Criminal Appeals may stay an execution date, or issue any order which effectively stays an execution date only upon a showing by the defendant that there exists a significant possibility of reversal of the defendant's conviction, or vacation of the defendant's sentence, and that irreparable harm will result if no stay is issued.

D. Should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law sixty (60) days after the dissolution of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of the dissolution of a stay of execution and suggest the appropriateness of the setting of a new execution date.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1015, is amended to read as follows:

Section 1015. A judgment of death must be executed within the walls of the state prison at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered. The judgment of execution shall take place at the direction of the warden of ~~the~~ said state prison and the warden must be present along with other necessary prison officials at the execution and must invite the presence of a physician and the district attorney, and sheriff of the county wherein the conviction was had, to witness the execution; and he shall, at the request of the defendant, permit the presence of such ministers of the ~~Gospel~~ defendant's choice, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name; provided, ~~newspaper men~~ reporters from recognized ~~newspapers, press, and wire services, and radio~~ reporters members of the news media will be admitted upon proper identification, application and approval of the warden. No other person than those mentioned in this section can be present at the execution.

SECTION 3. REPEALER 22 O.S. 1991, Sections 1012 and 1013, are hereby repealed.

SECTION 4. This act shall become effective September 1, 1992.

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