

SHORT TITLE: Uniform Controlled Dangerous Substances Act; creating the Drug Enterprise Death Penalty Act; codification; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 648

By: Mickle

AS INTRODUCED

An Act relating to the Uniform Controlled Dangerous Substances Act; creating the Drug Enterprise Death Penalty Act and providing short title; stating legislative findings; defining offenses and establishing penalties; providing death penalty for engaging in continuing criminal enterprise with reckless disregard for human life; providing certain procedures be used for sentencing; amending 21 O.S. 1991, Sections 701.7, as amended by Section 1, Chapter 161, O.S.L. 1996, 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992, 701.10a, as amended by Section 12, Chapter 325, O.S.L. 1993, 701.11, 701.11a, 701.12, 701.13, 701.15, and 701.16 (21 O.S. Supp. 1996, Sections 701.7, 701.10 and 701.10a), which relate to murder in the first degree, sentencing procedures for death penalty, sentencing procedures on remand, jury instructions for death penalty, clemency, aggravating circumstances, review of death sentence, constitutionality of certain sentences, and solicitation for murder; including certain offense as first degree murder; including certain offense in death penalty procedures; modifying and conforming language; limiting extent of penalty in certain situations; modifying references; adding aggravating circumstance for death penalty; making

gender neutral; providing for codification; and
declaring an emergency.

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 2-415a of Title 63, unless there
is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Drug
Enterprise Death Penalty Act".

B. The Legislature finds that trafficking in Schedule I or
Schedule II controlled substances as defined by the Uniform
Controlled Dangerous Substances Act, in Sections 2-204 and 2-206 of
Title 63 of the Oklahoma Statutes, carries a grave risk of death or
danger to the public; that a reckless disregard for human life is
implicit in knowingly trafficking in these substances, and that
persons who traffic in these substances may be determined by the
trier of fact to have a culpable mental state of reckless disregard
for human life.

C. For purposes of this section:

1. A person is engaged in a continuing criminal enterprise if:

a. the person violates any provision of the Trafficking
in Illegal Drugs Act, Section 2-414 et seq. of Title
63 of the Oklahoma Statutes, which is a felony, and

b. the violation is a part of a continuing series of
violations of the Trafficking in Illegal Drugs Act:

(1) which are undertaken by the person in concert
with five or more other persons with respect to
whom the person occupied a position as an
organizer, a supervisor, or any other position of
management, and

- (2) from which the person obtains substantial income or resources; and

2. A person engages in a continuing criminal enterprise with reckless disregard for human life if:

- a. the person violates any provision of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes, which is a felony, and
- b. the violation is a part of a continuing series of violations of the Trafficking in Illegal Drugs Act:
 - (1) where such person is the principal administrator, organizer, or leader of the enterprise or is one of several principal administrators, organizers, or leaders, and
 - (2) the violation is determined to be a quantity equal to one hundred (100) or more usual dosage amounts for a Schedule I or Schedule II mixture or substance as defined by the Uniform Controlled Dangerous Substances Act, in Sections 2-204 and 2-206 of Title 63 of the Oklahoma Statutes, or
 - (3) the enterprise, or any other enterprise in which the person was the principal or one of several principal administrators, organizers, or leaders, received Ten Million Dollars (\$10,000,000.00) in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a Schedule I or Schedule II substance as defined by the Uniform Controlled Dangerous Substances Act, in Sections 2-204 and 2-206 of Title 63 of the Oklahoma Statutes.

D. In addition to any other penalties set forth in the Trafficking in Illegal Drugs Act, any person who engages in or works in furtherance of a continuing criminal enterprise shall be

sentenced to a term of imprisonment of not less than twenty (20) years or up to life imprisonment.

E. 1. In addition to any other penalties set forth in the Trafficking in Illegal Drugs Act, any person who engages in or works in furtherance of a continuing criminal enterprise with reckless disregard for human life shall be sentenced to a term of imprisonment of not less than thirty (30) years or up to life imprisonment, or may be sentenced to death.

2. If a sentence of death is imposed pursuant to the authority of this subsection, the court shall proceed as required by law for imposition of a death sentence. All statutory requirements for notice, hearing, mitigating and aggravating circumstances, findings, instructions to the jury, if the jury has not been waived, and automatic review of the sentence shall apply.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 701.7, as amended by Section 1, Chapter 161, O.S.L. 1996 (21 O.S. Supp. 1996, Section 701.7), is amended to read as follows:

Section 701.7 A. A person commits murder in the first degree when that person unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree, regardless of malice, when that person or any other person takes the life of a human being during, or if the death of a human being results from, the commission or attempted commission of murder of another person, shooting or discharge of a firearm or crossbow with intent to kill, forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances, ~~or~~ trafficking in illegal drugs, or engaging

in a continuous criminal enterprise as defined by Section 1 of this act.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to Section 843 of this title.

D. A person commits murder in the first degree when that person unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Dangerous Substances Act, unlawfully possessing with intent to distribute or dispense controlled dangerous substances, ~~or~~ trafficking in illegal drugs, or engaging in a continuous criminal enterprise as defined by Section 1 of this act.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 (21 O.S. Supp. 1996, Section 701.10), is amended to read as follows:

Section 701.10 A. Upon conviction or adjudication of guilt of a defendant of murder in the first degree, or a conviction or adjudication of guilt of a defendant for engaging in a continuing criminal enterprise with reckless disregard for human life, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life ~~imprisonment without parole~~ or, for the offense of murder in the first degree, life imprisonment without parole. The proceeding shall be conducted by the trial judge before the same trial jury as soon as practicable without presentence investigation.

B. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court.

C. In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in Section ~~701.7 et seq.~~ 701.12 of this title. Only such evidence in aggravation as the state has made known to the defendant prior to ~~his~~ the trial shall be admissible. In addition, for the offense of murder in the first degree, the state may introduce evidence about the victim and about the impact of the murder on the family of the victim.

D. This section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or ~~his~~ the defendant's counsel shall be permitted to present argument for or against sentence of death.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 701.10a, as amended by Section 12, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1996, Section 701.10a), is amended to read as follows:

Section 701.10a Notwithstanding subsection A of Section 701.10 of this title, which requires that the same jury sit in the sentencing phase of a capital ~~murder~~ offense trial, the following shall apply:

1. Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court in the jurisdiction in which the defendant was originally sentenced. No error in the sentencing proceeding shall result in the reversal of the conviction for a capital felony. When a capital case is remanded after vacation of a death sentence, the prosecutor may:

- a. move the trial court to impose any sentence authorized by law at the time of the commission of the crime, which the trial court shall impose after a non-jury sentencing proceeding, provided, the original

sentencing proceeding was conducted before the court or the original sentencing proceeding was conducted before a jury and both the defendant and the state waive jury sentencing after remand; or

- b. move the trial court to impanel a new sentencing jury who shall determine the sentence of the defendant, which may be any sentence authorized by law at the time of the commission of the crime, provided, the original sentencing proceeding was conducted before a jury;

2. If the prosecutor elects to utilize the procedure provided in paragraph b of subsection 1 of this section, the trial court shall impanel a new jury for the purpose of conducting new sentencing proceedings;

3. Resentencing proceedings shall be governed by the provisions of Sections 701.10, 701.11 and 701.12 of this title;

4. All exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing shall be admissible in the new sentencing proceeding; additional relevant evidence may be admitted including testimony of witnesses who testified at the previous trial;

5. The provisions of this section are procedural and shall apply retroactively to any defendant sentenced to death;

6. This section shall not be construed to amend the provisions of Section 701.10 of this title, requiring the same jury to sit in both the guilt and sentencing phases of the original trial.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 701.11, is amended to read as follows:

Section 701.11 In the sentencing proceeding for a capital offense, the statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the jury for its deliberation. The jury, if its verdict

be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in Section 701.12 of this act ~~title~~ is so found or if it is found that any such aggravating circumstance is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life ~~without parole~~ or, for the offense of murder in the first degree, imprisonment for life or imprisonment for life without parole.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 701.11a, is amended to read as follows:

Section 701.11a Nothing in Section 701.7 et seq. of this act ~~title~~ shall be construed to impair or abrogate the use of clemency by way of commutation or pardon.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 701.12, is amended to read as follows:

Section 701.12 Aggravating circumstances shall be:

1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;
2. The defendant knowingly created a great risk of death to more than one person;
3. The defendant knowingly trafficked in Schedule I or Schedule II controlled substances in violation of the Uniform Controlled Dangerous Substances Act and the Trafficking in Illegal Drugs Act in a quantity of one hundred (100) or more usual dosage amounts in reckless disregard for human life;

~~4.~~ 4. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

~~4.~~ 5. The murder was especially heinous, atrocious, or cruel;

~~5.~~ 6. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

~~6.~~ 7. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony;

~~7.~~ 8. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; or

~~8.~~ 9. The victim of the murder was a peace officer as defined by Section 99 of ~~Title 21 of the Oklahoma Statutes~~ this title, or guard of an institution under the control of the Department of Corrections, and such person was killed while in performance of official duty.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 701.13, is amended to read as follows:

Section 701.13 A. Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Oklahoma Court of Criminal Appeals. The court reporter of the trial court shall prepare all transcripts necessary for appeal within six (6) months of the imposition of the sentence.

The clerk of the trial court, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Oklahoma Court of Criminal Appeals together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of ~~his~~ the defendant's attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the

form of a standard questionnaire prepared and supplied by the Oklahoma Court of Criminal Appeals.

B. The Oklahoma Court of Criminal Appeals shall consider the punishment as well as any errors enumerated by way of appeal.

C. With regard to the sentence, the court shall determine:

1. Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

2. Whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in Section 701.12 of this title.

D. Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court. The defendant shall have one hundred twenty (120) days from the date of receipt by the court of the record, transcript notice, and report provided for in subsection A of this section, in which to submit a brief. The state shall have sixty (60) days from the date of filing of the defendant's brief to file a reply brief. The defendant may file a reply brief within a time period established by the court, however the receipt of the reply brief, the hearing of oral arguments, and the rendering of a decision by the court all shall be concluded within one (1) year after the date of the filing of the reply brief. If the defendant or the state fails to submit their respective briefs within the period prescribed by law, the defendant or the state shall transmit a written statement of explanation to the Presiding Judge of the Court of Criminal Appeals who shall have the authority to grant an extension of the time to submit briefs, based upon a showing of just cause. Failure to submit briefs in the required time may be punishable as indirect contempt of court.

E. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

1. Affirm the sentence of death; or

2. Set the sentence aside and remand the case for resentencing by the trial court.

F. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence.

G. If the court reporter of the trial court fails to complete preparation of the transcripts necessary for appeal within the six-month period required by the provisions of subsection A of this section, the court reporter shall transmit a written statement of explanation of such failure to the Chief Justice of the Oklahoma Supreme Court, the Presiding Judge of the Court of Criminal Appeals, and the Administrative Director of the Courts. The Court of Criminal Appeals shall have the authority to grant an extension of the time for filing the transcripts, based upon a showing of just cause. Failure to complete the transcripts in the required time may be punishable as indirect contempt of court and except for just cause shown may result in revocation of the license of the court reporter.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 701.15, is amended to read as follows:

Section 701.15 In the event the death penalty is held to be unconstitutional by the Oklahoma Court of Criminal Appeals or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death shall cause such person to be brought before the court, and the court shall sentence such person to imprisonment for life or, for the offense of murder in the first degree, imprisonment for life or imprisonment for life without parole.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 701.16, is amended to read as follows:

Section 701.16 It shall be unlawful for any person or agent of that person to solicit another person or persons to cause the death of a human being by the act of murder in the first degree as is defined by ~~Title 21 O.S.,~~ Section 701.7 of this title. A person who is convicted, pleads guilty or pleads nolo contendere to the act of Solicitation For Murder in the first degree, except as provided in Section 701.7 of this title, shall be punished by imprisonment in ~~a state penal institution~~ the custody of the Department of Corrections for a term of not less than five (5) years nor more than life imprisonment ~~in the State Penitentiary~~.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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