

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2648

By: Toure

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 1001 and 1001.1, which relate to death sentences; prohibiting setting of execution dates within certain period of time; requiring the Oklahoma Sentencing Commission to study cases involving homicides; requiring report; providing for distribution of report; requiring certain entities to cooperate with Sentencing Commission; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1001, is amended to read as follows:

Section 1001. A. When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county a warrant duly attested by the clerk, under the seal of the court, stating the conviction and judgment and appointing a day on which the judgment is to be executed, which must be not less than sixty (60) nor more than ninety (90) days from the time of the judgment and must direct the sheriff to deliver the defendant within ten (10) days from the time of judgment to the warden of the state prison at McAlester, in this state, for execution.

B. A judge shall not appoint a day on which the judgment is to be executed which falls during the period beginning on March 1, 2002, and ending on March 1, 2003. A judge shall enter an order of continuance for any judgment of death previously set which would result in a judgment of death being executed during the period beginning on March 1, 2002, and ending on March 1, 2003, to a date subsequent to March 1, 2003.

SECTION 2. AMENDATORY 22 O.S. 2001, 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 thirty (30) days after the 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 unless a first application for post-conviction relief is pending;

2. If a defendant does not file an original application for post-conviction relief in the Court of Criminal Appeals within ninety (90) days from the filing of the appellee's brief on direct appeal or, if a reply brief is filed, ninety (90) days from the filing of that reply brief, or a petition in error to the Court of Criminal Appeals after remand within thirty (30) days from entry of judgment by the district court disposing of the application for post-conviction relief;

3. 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;

4. 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;

5. 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

6. 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, 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.

E. The Court of Criminal Appeals shall not set a date for the execution of the judgment in cases where a sentence of death has been imposed during the period beginning on March 1, 2002, and ending on March 1, 2003. The Court of Criminal Appeals shall enter an order of continuance for any sentence of death previously set

which would result in a sentence of death being executed during the period beginning on March 1, 2002, and ending on March 1, 2003, to a date subsequent to March 1, 2003. All other proceedings related to cases in which a judgment of death has been imposed shall proceed pursuant to law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1517 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. 1. The Oklahoma Sentencing Commission shall, prior to January 1, 2003, review and analyze all cases involving homicide after July 24, 1976. The review and analysis shall examine the following items:

- a. the facts,
- b. mitigating and aggravating circumstances,
- c. race, gender, religious preference and economic status of defendants and victims,
- d. the charges filed,
- e. results of the judicial proceedings, including appellate proceedings, and
- f. sentence imposed.

2. The Oklahoma Sentencing Commission shall also review and analyze the following policy-related issues:

- a. the costs of lifetime incarceration as opposed to the costs of imposing the death penalty, including the cost of death penalty-related appeals,
- b. the effectiveness of the death penalty as a deterrent to crime, and
- c. how many defendants have been sentenced to death nationwide who were subsequently exonerated of the crime for which the defendant was sentenced to death during the last twenty (20) years.

B. A report containing the results of the review and analysis shall be produced by the Commission. The report shall be presented to the Office of the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Presiding Judge of the Oklahoma Court of Criminal Appeals on or before March 1, 2003.

C. It shall be the duty of all departments, officers, agencies, and employees of the State of Oklahoma and all the departments, officers, agencies and employees of the counties of the State of Oklahoma to cooperate with the Commission or agents of the Commission in carrying out the provisions of this section of law.

SECTION 4. 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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