

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE JOINT  
RESOLUTION 28

By: Monson of the Senate

and

Toure of the House

AS INTRODUCED

A Joint Resolution relating to the death penalty; ordering a legislative referendum pursuant to the Oklahoma Constitution; amending 22 O.S. 1991, Sections 1001 and 1001.1, as last amended by Section 1, Chapter 256, O.S.L. 1995 (22 O.S. Supp. 2000, Section 1001.1) which relate to death sentences; prohibiting setting of execution dates within certain period of time; providing for resetting of certain dates; requiring Oklahoma Sentencing Commission study cases involving homicides; requiring report and providing for distribution; requiring certain entities cooperate with Sentencing Commission; providing for codification; providing ballot title; providing for special election; and directing filing.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE  
1ST SESSION OF THE 48TH OKLAHOMA LEGISLATURE:

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at the Special Election to be held on August 21, 2001.

SECTION 2. AMENDATORY 22 O.S. 1991, 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. 1. A judge shall not appoint a day on which the judgment is to be executed which falls during the period beginning on September 1, 2001, and ending on August 31, 2002.

2. If, prior to the effective date of this act, a judge has set a date for execution of a judgment which falls during the period beginning on September 1, 2001, and ending on August 31, 2002, the date shall be reset for a time that falls after August 31, 2002.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1001.1, as last amended by Section 1, Chapter 256, O.S.L. 1995 (22 O.S. Supp. 2000, 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, except no

execution date that would fall during the period beginning on September 1, 2001, and ending on August 31, 2002, shall be set. 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. 1. 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 September 1, 2001, and ending on August 31, 2002. All other proceedings not inconsistent with the provisions of this section related to cases in which a judgment of death has been imposed shall proceed pursuant to law.

2. If, prior to the effective date of this act, the Court of Criminal Appeals has set a date for execution of a judgment which falls during the period beginning on September 1, 2001, and ending on August 31, 2002, the date shall be reset for a time that falls after August 31, 2002.

SECTION 4. 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 March 1, 2002, 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, 2002.

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 5. This act shall become effective September 1, 2001, upon approval by the people.

SECTION 6. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure relates to the death penalty. It prohibits a judge from setting a date for execution during a certain time period. It prohibits the Court of Criminal Appeals from setting a date for execution during the same time period. It provides for resetting of dates for execution that have already been scheduled for this time period. This time period is from September 1, 2001, until August 31, 2002. It requires the Oklahoma Sentencing Commission to study homicide cases and related issues. The Commission must write a report of the results of the study. The report will be given to the Governor and the Legislature. County and state entities must cooperate with the Commission.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

YES, FOR THE AMENDMENT

NO, AGAINST THE AMENDMENT

SECTION 7. A special election is hereby ordered to be held throughout the State of Oklahoma on the date of August 21, 2001, at which time the proposed amendment to the Oklahoma Statutes, as set forth in SECTIONS 2 through 6 of this resolution, shall be submitted to the people of Oklahoma for their approval or rejection as and in the manner provided by law.

SECTION 8. The President Pro Tempore of the Senate shall, immediately after the passage of this order for legislative referendum, prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution, one copy of this order for legislative referendum, including the Ballot Title set forth in SECTION 6, with the Secretary of State and one copy with the Attorney General.

48-1-1699

JY

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