

and

Coffee of the Senate

An Act relating to death sentences; defining term; establishing examination procedures for defendants alleged mentally incompetent to be executed; authorizing filing of motion by certain attorney; providing deadline for filing motion; specifying information to be included in motion; authorizing remand of competency issue to certain trial court; prohibiting consideration of competency until certain date scheduled; requiring certain determination be made upon receipt of remand; authorizing stay of execution by certain court; authorizing denial of motion under certain circumstances; authorizing examination of defendant under certain circumstances; providing statutory reference; requiring consent to state examination; requiring waiver and consent to release certain records; prohibiting consideration of expert evidence upon refusal of examination; requiring certain determinations be made by examiner; directing examiner to provide report to certain persons; requiring court to conduct competency hearing; directing trial court to summon and impanel jury upon request; providing presumption of competency; providing burden of proof required of defendant; requiring stay of execution upon certain finding; requiring periodic reexamination of defendant after issuance of stay; requiring execution of judgment by warden if competency found; directing filing of certain motion upon defendant regaining competency; providing venue for motion and competency hearing; requiring vacation of stay under certain circumstances; requiring setting of execution date; authorizing filing of certain motion due to intervening change; providing definition; specifying procedures to be used upon certain determination; requiring filings be made in good faith; repealing 22 O.S. 2001, Section 1005, which relates to prisoner becoming insane; providing for codification; and providing an effective date.

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 1017 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. As used in Sections 1 through 4 of this act, the term "mentally incompetent to be executed" means that because of a mental condition, the person is presently unable to:

1. Know why he or she is being executed; and
2. Understand that he or she is to be executed and that execution is imminent.

B. If, after a sentence of death is imposed, the attorney for the defendant has good reason to believe that the defendant may be mentally incompetent to be executed, the attorney for the defendant may file a motion in the Court of Criminal Appeals setting forth the facts giving rise to the belief that the defendant may be mentally incompetent to be executed and requesting the court to order that the defendant be examined for mental competency.

C. A motion alleging an inmate is mentally incompetent to be executed shall be filed in the first instance when filing a written response to the motion of the Attorney General to set an execution date. The attorney for the defendant shall have seven (7) days from the filing of the motion of the Attorney General to file a response and raise this issue.

D. A motion alleging a defendant is mentally incompetent to be executed must identify the proceeding in which the defendant was convicted and clearly set forth alleged facts in support of the assertion that the defendant is presently incompetent to be executed. The attorney for the defendant shall attach affidavits, records, or other evidence supporting the allegations of the defendant or shall state why those items are not attached. The motion shall identify any previous proceedings in which the defendant challenged his or her competency in relation to the conviction and sentence in question, including any challenge to the competency of the defendant to be executed, competency to stand trial, or sanity at the time of the offense.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1017.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. In the order of the Court of Criminal Appeals setting the execution date, the Court of Criminal Appeals may remand the issue of competency of the defendant to be executed to the trial court where the defendant was originally tried and sentenced for a determination of the issue. The issue of whether a defendant is mentally incompetent to be executed shall not be considered unless and until an execution date has been scheduled.

B. Upon receipt of the remand, the trial court shall determine whether the defendant, through the motion and any attached documents, has raised a substantial doubt of the competency of the defendant to be executed. Prior to finding that the defendant is mentally incompetent to be executed, a stay of execution may only be granted by the Court of Criminal Appeals.

C. If the trial court determines the defendant has failed to make a substantial showing that he or she is mentally incompetent to be executed, the court shall deny the motion.

D. If the trial court determines the defendant has made a substantial showing that he or she is mentally incompetent to be executed, the trial court shall order the defendant be examined by a qualified forensic examiner or examiners as defined in Section 1175.1 of Title 22 of the Oklahoma Statutes. By filing the motion, the defendant specifically consents to submit to a state examination for the purpose of assessing mental competency to be executed. In addition, the defendant:

1. Waives any claim of privilege with respect to all mental health and medical records relevant to whether the defendant is incompetent to be executed; and

2. Consents to the release of all mental health and medical records relevant to whether the defendant is incompetent to be executed.

E. If the defendant refuses to be examined by the expert for the state, the trial court shall not consider any expert evidence offered by the defendant concerning the competency of the defendant.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1017.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The qualified forensic examiner shall receive instructions that he or she shall examine the defendant to determine:

1. If the defendant is able to know why he or she is being executed; and

2. If the defendant is able to understand that he or she is to be executed and that execution is imminent.

B. The qualified forensic examiner shall provide, within a certain time ordered by the trial court, a copy of the report to the attorney representing the state, the attorney representing the defendant, and the court.

C. After the examinations are complete, the trial court shall conduct a hearing to determine whether the defendant is mentally competent to be executed. Upon request of either party, the trial court shall cause to be summoned and impaneled from the regular jury list a jury of six persons to hear such inquiry.

D. The defendant shall be presumed to be competent to be executed. The defendant must overcome the presumption of competency by a preponderance of the evidence.

E. If the trial court finds that the defendant is incompetent to be executed, the trial court shall issue a stay of execution. If a stay of execution is issued, the trial court shall periodically order that the defendant be reexamined by a qualified forensic

examiner or examiners to determine whether the defendant is no longer incompetent to be executed.

F. If the trial court finds that the defendant is competent to be executed, the warden must proceed to execute the judgment as certified in the warrant.

G. If a defendant, who was determined to be mentally incompetent to be executed, regains his or her mental competency, a motion to determine mental competency shall be filed with and heard by the trial court where the defendant was originally tried. If, at the conclusion of said hearing, the trial court finds that the defendant is competent to be executed, the trial court shall vacate the stay of execution. If the prior execution date has expired, a new execution date shall be set as provided in Section 1001.1 of Title 22 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1017.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Should any intervening change in the competency of the defendant to be executed occur after the seven-day deadline to initiate these proceedings, as described in subsection C of Section 1 of this act, the attorney for the defendant may file a motion alleging that the defendant is mentally incompetent to be executed with the Court of Criminal Appeals.

B. An intervening change shall be a condition that has not and could not have been presented previously in a timely motion because the factual basis for the claim was unavailable as it was not ascertainable through the exercise of reasonable diligence.

C. If the Court of Criminal Appeals determines that an intervening change has occurred, the procedures set forth in Sections 1 through 3 of this act shall then apply.

D. Any filing made pursuant to Sections 1 through 4 of this act shall be made in good faith as provided in Rule 9.7(C) of Section IX

of the Rules of the Court of Criminal Appeals, Chapter 18, Appendix of Title 22 of the Oklahoma Statutes.

SECTION 5. REPEALER 22 O.S. 2001, Section 1005, is hereby repealed.

SECTION 6. This act shall become effective November 1, 2006.

Passed the House of Representatives the 28th day of February, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate