

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2739

By: Toure

AS INTRODUCED

An Act relating to death penalty; amending 21 O.S. 2001, Section 5, which relates to definition of felony; modifying scope of definition; amending 21 O.S. 2001, Section 543, which relates to compounding crimes; modifying certain qualifier; amending 21 O.S. 2001, Sections 701.9, as amended by Section 3, Chapter 520, O.S.L. 2004, 701.10, 701.10a and 701.11 (21 O.S. Supp. 2005, Section 701.9), which relate to homicide; providing date references; modifying penalty for murder; clarifying appeal procedure; providing date references; allowing presentation of argument for parole eligibility; deleting jury procedures for findings of aggravating circumstances; amending 21 O.S. 2001, Section 1115, as amended by Section 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1115), which relates to rape; modifying penalty; amending 22 O.S. 2001, Sections 1001 and 1001.1, as last amended by Section 1, Chapter 164, O.S.L. 2004 (22 O.S. Supp. 2005, Section 1001.1), which relate to death sentences; providing date reference; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 5, is amended to read as follows:

Section 5. A felony is a crime which is, or may be, punishable ~~with death, or~~ by imprisonment in the ~~penitentiary~~ custody of the Department of Corrections.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 543, is amended to read as follows:

Section 543. Any person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or violation of statute,

or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:

1. By imprisonment for a felony in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding five (5) years, or in a county jail not exceeding one (1) year, if the crime compounded is one punishable ~~either by death or~~ by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for life;

2. By imprisonment for a felony in the State Penitentiary not exceeding three (3) years, or in a county jail not exceeding six (6) months, if the crime compounded was punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for any other term than for life; or

3. By imprisonment in a county jail not exceeding one (1) year, or by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or by both such fine and imprisonment, if the crime or violation of statute compounded is a crime punishable by imprisonment in a county jail, or by fine, or is a misdemeanor, or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 701.9, as amended by Section 3, Chapter 520, O.S.L. 2004 (21 O.S. Supp. 2005, Section 701.9), is amended to read as follows:

Section 701.9 A. ~~A~~ On or after November 1, 2006, a person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by ~~death,~~ ~~by~~ imprisonment for life without parole or by imprisonment for life. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree, as described in subsection E of Section 701.7 of this title, shall not be entitled to or afforded the benefit of deferment of the sentence.

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be guilty of a

felony punishable by imprisonment in ~~a state penal institution~~ the custody of the Department of Corrections for not less than ten (10) years nor more than life.

SECTION 4. AMENDATORY 21 O.S. 2001, 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 committed after November 1, 2006, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to ~~death~~, life imprisonment without parole or life imprisonment. 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. of this title. Only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. In addition, 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 counsel shall be permitted to present argument for or against ~~sentence of death~~ parole eligibility.

SECTION 5. AMENDATORY 21 O.S. 2001, 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 trial, the following shall

apply to cases where the defendant was sentenced to death prior to November 1, 2006:

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~~r~~, 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~~r~~; 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 6. AMENDATORY 21 O.S. 2001, Section 701.11, is amended to read as follows:

Section 701.11 In the sentencing proceeding, 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 this act 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 imprisonment for life.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1115, as amended by Section 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by ~~death or~~ imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections, for a term of not less than five (5) years, life or life without parole. Any person convicted of a

second or subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for life or life without parole.

SECTION 8. AMENDATORY 22 O.S. 2001, Section 1001, is amended to read as follows:

Section 1001. ~~When~~ For cases where a judgment of death is rendered prior to November 1, 2006, 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.

SECTION 9. AMENDATORY 22 O.S. 2001, Section 1001.1, as last amended by Section 1, Chapter 164, O.S.L. 2004 (22 O.S. Supp. 2005, Section 1001.1), is amended to read as follows:

Section 1001.1 A. The execution of the judgment in cases where, prior to November 1, 2006, a 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 the 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. After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law thirty (30) 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 setting a new execution date.

F. After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court and then vacated by such court, the sentence of death shall be carried out as ordered prior to the

issuance of such vacated stay of execution. If the prior execution date has expired prior to the vacation of the stay of execution, a new execution date shall be set by operation of law thirty (30) days after the vacation 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 a vacation of the stay of execution and suggest the appropriateness of the setting of a new execution date.

G. After an execution date has been set pursuant to the provisions of this section, should the Governor of the State of Oklahoma issue a stay of execution pursuant to the powers articulated in Section 10 of Article VI of the Oklahoma Constitution, the Governor shall, simultaneous to the granting of the stay, set a new execution date. The sentence of death shall be carried out not more than thirty (30) days after the dissolution of the stay of execution; however, nothing shall prevent the Governor from ordering the new execution date to be on the first day immediately following dissolution of the stay.

SECTION 10. This act shall become effective November 1, 2006.

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