

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2876

By: Dunnington

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5
6 AS INTRODUCED

7
8 An Act relating to the death penalty; amending 21
9 O.S. 2011, Section 5, which relates to the definition
10 of a felony; removing death penalty as an option for
11 punishment; updating language; amending 21 O.S. 2011,
12 Section 543, which relates to penalties for
13 compounding or concealing crimes; removing death
14 penalty as an option for punishment; updating
15 language; amending 21 O.S. 2011, Sections 701.9, as
16 amended by Section 2, Chapter 169, O.S.L. 2017,
17 701.10, as amended by Section 1, Chapter 6, O.S.L.
18 2013, Section 2, Chapter 6, O.S.L. 2013, 701.10a,
19 701.10b, as amended by Section 18, Chapter 475,
20 O.S.L. 2019, 701.11 and 701.13 (21 O.S. Supp. 2019,
21 Sections 701.9, 701.10, 701.10-1 and 701.10b), which
22 relate to penalties for murder and death penalty
23 sentencing and procedures; removing death penalty as
24 an option for punishment; removing death penalty
option from separate sentencing proceedings;
specifying which death penalty cases are subject to
certain sentencing procedures; providing date
references; updating language; amending 21 O.S. 2011,
Section 745, which relates to penalties for
extortionate kidnapping; removing death penalty as an
option for punishment; amending 21 O.S. 2011, Section
843.5, as amended by Section 1, Chapter 284, O.S.L.
2019 (21 O.S. Supp. 2019, Section 843.5), which
relates to penalties for child abuse; removing death
penalty as an option for punishment; amending 21 O.S.
2011, Sections 1115 (Section 5, Chapter 455, O.S.L.
2002) and 1115 (Section 124, Chapter 234, O.S.L.
2009), which relate to penalties for first degree
rape; removing death penalty as an option for
punishment; amending 22 O.S. 2011, Section 929, which
relates to remanding cases to trial court for

1 resentencing; providing date reference for certain
2 construing provision; amending 22 O.S. 2011, Section
3 982, as last amended by Section 1, Chapter 326,
4 O.S.L. 2019 (22 O.S. Supp. 2019, Section 982), which
5 relates to presentence investigations; removing death
6 sentence exception; amending 22 O.S. 2011, Section
7 991a-20, which relates to the Elderly and
8 Incapacitated Victim's Protection Program; updating
9 language; modifying exception to include date
10 reference for certain sentences; amending 22 O.S.
11 2011, Sections 1001, 1001.1, 1002, 1014, as last
12 amended by Section 1, Chapter 348, O.S.L. 2017 and
13 1015 (22 O.S. Supp. 2019, Section 1014), which relate
14 to death penalty procedures; providing date
15 references; updating language; amending 22 O.S. 2011,
16 Section 1089, which relates to the Uniform Post-
17 Conviction Procedure Act; providing date reference;
18 updating language; and providing an effective date.

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

20 SECTION 1. AMENDATORY 21 O.S. 2011, Section 5, is
21 amended to read as follows:

22 Section 5. ~~A~~ On or after November 1, 2020, a felony is a crime
23 which is, or may be, punishable ~~with death, or~~ by imprisonment in
24 the ~~penitentiary~~ custody of the Department of Corrections.

25 SECTION 2. AMENDATORY 21 O.S. 2011, Section 543, is
26 amended to read as follows:

27 Section 543. ~~Any~~ On or after November 1, 2020, any person who,
28 having knowledge of the actual commission of a crime or violation of
29 statute, takes any money or property of another, or any gratuity or
30 reward, or any engagement or promise therefor, upon any agreement or
31 understanding, express or implied, to compound or conceal such

1 crime, or violation of statute, or to abstain from any prosecution
2 therefor, or to withhold any evidence thereof, is punishable as
3 follows:

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

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

16 3. By imprisonment in a county jail for a term not exceeding
17 one (1) year, or by a fine not exceeding Two Hundred Fifty Dollars
18 (\$250.00), or by both such fine and imprisonment, if the crime or
19 violation of statute compounded is a crime punishable by
20 imprisonment in a county jail, or by fine, or is a misdemeanor, or
21 violation of statute for which a pecuniary or other penalty or
22 forfeiture is prescribed.

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1 SECTION 3. AMENDATORY 21 O.S. 2011, Section 701.9, as
2 amended by Section 2, Chapter 169, O.S.L. 2017 (21 O.S. Supp. 2019,
3 Section 701.9), is amended to read as follows:

4 Section 701.9 A. A On or after November 1, 2020, a person who
5 is convicted of or pleads guilty or nolo contendere to murder in the
6 first degree shall be punished by ~~death,~~ by imprisonment for life
7 without parole or by imprisonment for life. A person who is
8 convicted of or pleads guilty or nolo contendere to murder in the
9 first degree, as described in subsection E of Section 701.7 of this
10 title, shall be punished by ~~death or by~~ life without parole and
11 absent an overwhelming amount of mitigating evidence shall not be
12 entitled to or afforded the benefit of receiving imprisonment for
13 life or deferment of the sentence.

14 B. A person who is convicted of or pleads guilty or nolo
15 contendere to murder in the second degree shall be guilty of a
16 felony punishable by imprisonment in the custody of the Department
17 of Corrections for a term of not less than ten (10) years nor more
18 than life.

19 SECTION 4. AMENDATORY 21 O.S. 2011, Section 701.10, as
20 amended by Section 1, Chapter 6, O.S.L. 2013 (21 O.S. Supp. 2019,
21 Section 701.10), is amended to read as follows:

22 Section 701.10 A. Upon conviction or adjudication of guilt of
23 a defendant of murder in the first degree that was committed on or
24 after November 1, 2020, ~~wherein the state is seeking the death~~

1 ~~penalty,~~ the court shall conduct a separate sentencing proceeding to
2 determine whether the defendant should be sentenced to ~~death,~~ life
3 imprisonment without parole or life imprisonment. The proceeding
4 shall be conducted by the trial judge before the same trial jury as
5 soon as practicable without presentence investigation.

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

9 C. In the sentencing proceeding, evidence may be presented as
10 to any mitigating circumstances or as to any of the aggravating
11 circumstances enumerated in Section 701.7 et seq. of this title.
12 Only such evidence in aggravation as the state has made known to the
13 defendant prior to his or her trial shall be admissible. In
14 addition, the state may introduce evidence about the victim and
15 about the impact of the murder on the family of the victim.

16 D. This section shall not be construed to authorize the
17 introduction of any evidence secured in violation of the
18 Constitutions of the United States or of the State of Oklahoma. The
19 state and the defendant or his or her counsel shall be permitted to
20 present argument for or against ~~sentence of death~~ parole
21 eligibility.

22 SECTION 5. AMENDATORY Section 2, Chapter 6, O.S.L. 2013
23 (21 O.S. Supp. 2019, Section 701.10-1), is amended to read as
24 follows:

1 Section 701.10-1 A. Upon conviction or adjudication of guilt
2 of a defendant of murder in the first degree that was committed on
3 or after November 1, 2020, wherein the state ~~is not seeking the~~
4 ~~death penalty but~~ has alleged that the defendant has prior felony
5 convictions, the court shall conduct a separate sentencing
6 proceeding to determine whether the defendant should be sentenced to
7 life imprisonment without parole or life imprisonment, wherein the
8 state shall be given the opportunity to prove any prior felony
9 convictions beyond a reasonable doubt. The proceeding shall be
10 conducted by the trial judge before the same trial jury as soon as
11 practicable without presentence investigation.

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

15 SECTION 6. AMENDATORY 21 O.S. 2011, Section 701.10a, is
16 amended to read as follows:

17 Section 701.10a Notwithstanding subsection A of Section 701.10
18 of this title, which requires that the same jury sit in the
19 sentencing phase of a capital murder trial, the following shall
20 apply to cases where the defendant was sentenced to death prior to
21 November 1, 2020:

22 1. Upon any appeal by the defendant where the sentence is of
23 death, the appellate court, if it finds prejudicial error in the
24 sentencing proceeding only, may set aside the sentence of death and

1 remand the case to the trial court in the jurisdiction in which the
2 defendant was originally sentenced. No error in the sentencing
3 proceeding shall result in the reversal of the conviction for a
4 capital felony. When a capital case is remanded after vacation of a
5 death sentence, the prosecutor may:

6 a. move the trial court to impose any sentence authorized
7 by law at the time of the commission of the crime,
8 which the trial court shall impose after a non-jury
9 sentencing proceeding, provided, the original
10 sentencing proceeding was conducted before the court
11 or the original sentencing proceeding was conducted
12 before a jury and both the defendant and the state
13 waive jury sentencing after remand~~r~~, or

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

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

24

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

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

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

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

13 SECTION 7. AMENDATORY 21 O.S. 2011, Section 701.10b, as
14 amended by Section 18, Chapter 475, O.S.L. 2019 (21 O.S. Supp. 2019,
15 Section 701.10b), is amended to read as follows:

16 Section 701.10b A. For purposes of this section:

17 1. "Intellectual disability" or "intellectually disabled" means
18 significantly subaverage general intellectual functioning, existing
19 concurrently with significant limitations in adaptive functioning;

20 2. "Significant limitations in adaptive functioning" means
21 significant limitations in two or more of the following adaptive
22 skill areas: communication, self-care, home living, social skills,
23 community use, self-direction, health, safety, functional academics,
24 leisure skills and work skills; and

1 3. "Significantly subaverage general intellectual functioning"
2 means an intelligence quotient of seventy (70) or below.

3 B. Regardless of any provision of law to the contrary, no
4 defendant who is intellectually disabled shall be sentenced to
5 death; provided, however, the onset of the intellectual disability
6 must have been manifested before the defendant attained the age of
7 eighteen (18) years.

8 C. The defendant has the burden of production and persuasion to
9 demonstrate intellectual disability by showing significantly
10 subaverage general intellectual functioning, significant limitations
11 in adaptive functioning, and that the onset of the intellectual
12 disability was manifested before the age of eighteen (18) years. An
13 intelligence quotient of seventy (70) or below on an individually
14 administered, scientifically recognized, standardized intelligence
15 quotient test administered by a licensed psychiatrist or
16 psychologist is evidence of significantly subaverage general
17 intellectual functioning; however, it is not sufficient without
18 evidence of significant limitations in adaptive functioning and
19 without evidence of manifestation before the age of eighteen (18)
20 years. In determining the intelligence quotient, the standard
21 measurement of error for the test administered shall be taken into
22 account.

23 However, in no event shall a defendant who has received an
24 intelligence quotient of seventy-six (76) or above on any

1 individually administered, scientifically recognized, standardized
2 intelligence quotient test administered by a licensed psychiatrist
3 or psychologist, be considered intellectually disabled and, thus,
4 shall not be subject to any proceedings under this section.

5 D. A For cases where a defendant has been charged with capital
6 murder ~~who~~ prior to November 1, 2020, and intends to raise an
7 intellectual disability as a bar to the death sentence, the
8 defendant shall provide to the state notice of such intention at
9 least ninety (90) days after formal arraignment or within ninety
10 (90) days after the filing of a bill of particulars, whichever is
11 later. The notice shall include a brief but detailed statement
12 specifying the witnesses, nature and type of evidence sought to be
13 introduced. The notice must demonstrate sufficient facts that
14 demonstrate a good-faith belief as to the intellectual disability of
15 the defendant.

16 E. The district court shall conduct an evidentiary hearing to
17 determine whether the defendant is intellectually disabled. If the
18 court determines, by clear and convincing evidence, that the
19 defendant is intellectually disabled, the defendant, if convicted,
20 shall be sentenced to life imprisonment or life without parole. If
21 the district court determines that the defendant is not
22 intellectually disabled, the capital trial of the offense may
23 proceed. A request for a hearing under this section shall not waive
24 entitlement by the defendant to submit the issue of an intellectual

1 disability to a jury during the sentencing phase in a capital trial
2 if convicted of an offense punishable by death. The court's
3 determination on the issue of an intellectual disability shall not
4 be the subject of an interlocutory appeal.

5 F. The court shall submit a special issue to the jury as to
6 whether the defendant is intellectually disabled. This special
7 issue shall be considered and answered by the jury during the
8 sentencing stage and prior to the determination of sentence. If the
9 jury unanimously determines that the defendant is intellectually
10 disabled, the defendant may only be sentenced to life imprisonment
11 or life without parole. The defendant has the burden of production
12 and persuasion to demonstrate an intellectual disability to the jury
13 by a preponderance of the evidence.

14 G. If the jury determines that the defendant is not
15 intellectually disabled or is unable to reach a unanimous decision,
16 the jury shall proceed to determine the existence of aggravating and
17 mitigating factors in determining whether the sentence of death
18 shall be imposed. In those deliberations, the jury may consider any
19 evidence of an intellectual disability as a mitigating factor in
20 sentencing the defendant.

21 H. If the jury determines that the defendant is not
22 intellectually disabled and imposes a death sentence, the trial
23 court shall make findings of fact and conclusions of law relating to
24 the issue of whether the determination on the issue of an

1 intellectual disability was made under the influence of passion,
2 prejudice, or any other arbitrary factor. The findings shall be
3 attached as an exhibit to the report of the trial judge required
4 under Section 701.13 of ~~Title 21 of the Oklahoma Statutes~~ this
5 title. If the trial court finds that the determination of an
6 intellectual disability was not supported by the evidence, the issue
7 may be raised on appeal to the Oklahoma Court of Criminal Appeals
8 for consideration as part of its mandatory sentence review.

9 I. The standard of review for a trier of fact intellectual
10 disability determination shall be whether, after reviewing the
11 evidence in the light most favorable to the state, any rational
12 trier of fact could have found the defendant not intellectually
13 disabled as defined by this section, giving full deference to the
14 findings of the trier of fact.

15 J. The court shall give appropriate instructions in those cases
16 in which evidence of the intellectual disability of the defendant
17 requires the consideration by the jury of the provisions of this
18 section.

19 SECTION 8. AMENDATORY 21 O.S. 2011, Section 701.11, is
20 amended to read as follows:

21 Section 701.11 In the sentencing proceeding, the statutory
22 instructions as determined by the trial judge to be warranted by the
23 evidence shall be given in the charge and in writing to the jury for
24 its deliberation. ~~The jury, if its~~ If, prior to November 1, 2020,

1 the verdict ~~be~~ is a unanimous recommendation of death, the jury
2 shall designate in writing, signed by the foreman of the jury, the
3 statutory aggravating circumstance or circumstances which it
4 unanimously found beyond a reasonable doubt. In non-jury cases the
5 judge shall make such designation. Unless at least one of the
6 statutory aggravating circumstances enumerated in this act is so
7 found or if it is found that any such aggravating circumstance is
8 outweighed by the finding of one or more mitigating circumstances,
9 the death penalty shall not be imposed. If the jury cannot, within
10 a reasonable time, agree as to punishment, the judge shall dismiss
11 the jury and impose a sentence of imprisonment for life without
12 parole or imprisonment for life.

13 SECTION 9. AMENDATORY 21 O.S. 2011, Section 701.13, is
14 amended to read as follows:

15 Section 701.13 A. ~~Whenever~~ For cases where the death penalty
16 is imposed prior to November 1, 2020, and upon the judgment becoming
17 final in the trial court, the sentence shall be reviewed on the
18 record by the Oklahoma Court of Criminal Appeals. The court
19 reporter of the trial court shall prepare all transcripts necessary
20 for appeal within six (6) months of the imposition of the sentence.

21 The clerk of the trial court, within ten (10) days after
22 receiving the transcript, shall transmit the entire record and
23 transcript to the Oklahoma Court of Criminal Appeals together with a
24 notice prepared by the clerk and a report prepared by the trial

1 judge. The notice shall set forth the title and docket number of
2 the case, the name of the defendant and the name and address of ~~his~~
3 the attorney for the defendant, a narrative statement of the
4 judgment, the offense~~r~~, and the punishment prescribed. The report
5 shall be in the form of a standard questionnaire prepared and
6 supplied by the Oklahoma Court of Criminal Appeals.

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

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

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

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

15 D. Both the defendant and the state shall have the right to
16 submit briefs within the time provided by the court, and to present
17 oral argument to the court. The defendant shall have one hundred
18 twenty (120) days from the date of receipt by the court of the
19 record, transcript notice, and report provided for in subsection A
20 of this section, in which to submit a brief. The state shall have
21 sixty (60) days from the date of filing of the ~~defendant's~~ brief of
22 the defendant to file a reply brief. The defendant may file a reply
23 brief within a time period established by the court~~r~~i; however~~r~~, the
24 receipt of the reply brief, the hearing of oral arguments, and the

1 rendering of a decision by the court all shall be concluded within
2 one (1) year after the date of the filing of the reply brief. If
3 the defendant or the state fails to submit their respective briefs
4 within the period prescribed by law, the defendant or the state
5 shall transmit a written statement of explanation to the Presiding
6 Judge of the Oklahoma Court of Criminal Appeals who shall have the
7 authority to grant an extension of the time to submit briefs, based
8 upon a showing of just cause. Failure to submit briefs in the
9 required time may be punishable as indirect contempt of court.

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

- 13 1. Affirm the sentence of death; or
- 14 2. Set the sentence aside and remand the case for resentencing
15 by the trial court.

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

21 G. If the court reporter of the trial court fails to complete
22 preparation of the transcripts necessary for appeal within the six-
23 month period required by the provisions of subsection A of this
24 section, the court reporter shall transmit a written statement of

1 explanation of such failure to the Chief Justice of the Oklahoma
2 Supreme Court, the Presiding Judge of the Oklahoma Court of Criminal
3 Appeals, and the Administrative Director of the Courts. The
4 Oklahoma Court of Criminal Appeals shall have the authority to grant
5 an extension of the time for filing the transcripts, based upon a
6 showing of just cause. Failure to complete the transcripts in the
7 required time may be punishable as indirect contempt of court and
8 except for just cause shown may result in revocation of the license
9 of the court reporter.

10 SECTION 10. AMENDATORY 21 O.S. 2011, Section 745, is
11 amended to read as follows:

12 Section 745. A. Every person who, without lawful authority,
13 forcibly seizes and confines another, or inveigles or kidnaps
14 another, for the purpose of extorting any money, property or thing
15 of value or advantage from the person so seized, confined, inveigled
16 or kidnapped, or from any other person, or in any manner threatens
17 either by written instrument, word of mouth, message, telegraph,
18 telephone, by placing an ad in a newspaper, or by messenger, demands
19 money or other thing of value, shall, upon conviction, be guilty of
20 a felony, ~~and upon conviction shall suffer death or punishable by~~
21 imprisonment in the State Penitentiary, custody of the Department of
22 Corrections for a term of not less than ten (10) years.

23 B. Every person, not a principal in the kidnapping and not a
24 relative or agent authorized by a relative of a kidnapped person,

1 but who knowingly aids, assists, or participates in the disposing,
2 receiving, possession or exchanging of any moneys, property or thing
3 of value or advantage from the person so seized, confined, inveigled
4 or kidnapped, shall, upon conviction, be guilty of a felony, ~~and~~
5 ~~upon conviction thereof shall be punished~~ punishable by imprisonment
6 in the ~~State Penitentiary~~, custody of the Department of Corrections
7 for a term of not less than five (5) years.

8 SECTION 11. AMENDATORY 21 O.S. 2011, Section 843.5, as
9 last amended by Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp.
10 2019, Section 843.5), is amended to read as follows:

11 Section 843.5 A. Any parent or other person who shall
12 willfully or maliciously engage in child abuse shall, upon
13 conviction, be guilty of a felony punishable by imprisonment in the
14 custody of the Department of Corrections for a term not exceeding
15 life imprisonment, or by imprisonment in a county jail for a term
16 not exceeding one (1) year, or by a fine of not less than Five
17 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
18 (\$5,000.00), or both such fine and imprisonment. As used in this
19 subsection, "child abuse" means the willful or malicious harm or
20 threatened harm or failure to protect from harm or threatened harm
21 to the health, safety, or welfare of a child under eighteen (18)
22 years of age by another, or the act of willfully or maliciously
23 injuring, torturing or maiming a child under eighteen (18) years of
24 age by another.

1 B. Any parent or other person who shall willfully or
2 maliciously engage in enabling child abuse shall, upon conviction,
3 be punished by imprisonment in the custody of the Department of
4 Corrections for a term not exceeding life imprisonment, or by
5 imprisonment in a county jail for a term not exceeding one (1) year,
6 or by a fine of not less than Five Hundred Dollars (\$500.00) nor
7 more than Five Thousand Dollars (\$5,000.00), or both such fine and
8 imprisonment. As used in this subsection, "enabling child abuse"
9 means the causing, procuring or permitting of a willful or malicious
10 act of harm or threatened harm or failure to protect from harm or
11 threatened harm to the health, safety, or welfare of a child under
12 eighteen (18) years of age by another. As used in this subsection,
13 "~~permit~~ permitting" means to authorize or allow for the care of a
14 child by an individual when the person authorizing or allowing such
15 care knows or reasonably should know that the child will be placed
16 at risk of abuse as proscribed by this subsection.

17 C. Any parent or other person who shall willfully or
18 maliciously engage in child neglect shall, upon conviction, be
19 punished by imprisonment in the custody of the Department of
20 Corrections for a term not exceeding life imprisonment, or by
21 imprisonment in a county jail for a term not exceeding one (1) year,
22 or by a fine of not less than Five Hundred Dollars (\$500.00) nor
23 more than Five Thousand Dollars (\$5,000.00), or both such fine and
24 imprisonment. As used in this subsection, "child neglect" means the

1 willful or malicious neglect, as defined by Section 1-1-105 of Title
2 10A of the Oklahoma Statutes, of a child under eighteen (18) years
3 of age by another.

4 D. Any parent or other person who shall willfully or
5 maliciously engage in enabling child neglect shall, upon conviction,
6 be punished by imprisonment in the custody of the Department of
7 Corrections for a term not exceeding life imprisonment, or by
8 imprisonment in a county jail for a term not exceeding one (1) year,
9 or by a fine of not less than Five Hundred Dollars (\$500.00) nor
10 more than Five Thousand Dollars (\$5,000.00), or both such fine and
11 imprisonment. As used in this subsection, "enabling child neglect"
12 means the causing, procuring or permitting of a willful or malicious
13 act of child neglect, as defined by Section 1-1-105 of Title 10A of
14 the Oklahoma Statutes, of a child under eighteen (18) years of age
15 by another. As used in this subsection, "~~permit~~ permitting" means
16 to authorize or allow for the care of a child by an individual when
17 the person authorizing or allowing such care knows or reasonably
18 should know that the child will be placed at risk of neglect as
19 proscribed by this subsection.

20 E. Any parent or other person who shall willfully or
21 maliciously engage in child sexual abuse shall, upon conviction, be
22 punished by imprisonment in the custody of the Department of
23 Corrections for a term not exceeding life imprisonment, or by
24 imprisonment in a county jail for a term not exceeding one (1) year,

1 or by a fine of not less than Five Hundred Dollars (\$500.00) nor
2 more than Five Thousand Dollars (\$5,000.00), or both such fine and
3 imprisonment, except as provided in Section 51.1a of this title or
4 as otherwise provided in subsection F of this section for a child
5 victim under twelve (12) years of age. Except for persons sentenced
6 to life or life without parole, any person sentenced to imprisonment
7 for two (2) years or more for a violation of this subsection shall
8 be required to serve a term of post-imprisonment supervision
9 pursuant to subparagraph f of paragraph 1 of subsection A of Section
10 991a of Title 22 of the Oklahoma Statutes under conditions
11 determined by the Department of Corrections. The jury shall be
12 advised that the mandatory post-imprisonment supervision shall be in
13 addition to the actual imprisonment. As used in this section,
14 "child sexual abuse" means the willful or malicious sexual abuse,
15 which includes but is not limited to rape, incest, and lewd or
16 indecent acts or proposals, of a child under eighteen (18) years of
17 age by another.

18 F. Any parent or other person who shall willfully or
19 maliciously engage in sexual abuse to a child under twelve (12)
20 years of age shall, upon conviction, be punished by imprisonment in
21 the custody of the Department of Corrections for a term of not less
22 than twenty-five (25) years nor more than life imprisonment, and by
23 a fine of not less than Five Hundred Dollars (\$500.00) nor more than
24 Five Thousand Dollars (\$5,000.00).

1 G. Any parent or other person who shall willfully or
2 maliciously engage in enabling child sexual abuse shall, upon
3 conviction, be punished by imprisonment in the custody of the
4 Department of Corrections for a term not exceeding life
5 imprisonment, or by imprisonment in a county jail for a term not
6 exceeding one (1) year, or by a fine of not less than Five Hundred
7 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),
8 or both such fine and imprisonment. As used in this subsection,
9 "enabling child sexual abuse" means the causing, procuring or
10 permitting of a willful or malicious act of child sexual abuse,
11 which includes but is not limited to rape, incest, and lewd or
12 indecent acts or proposals, of a child under the age of eighteen
13 (18) by another. As used in this subsection, "~~permit~~ permitting"
14 means to authorize or allow for the care of a child by an individual
15 when the person authorizing or allowing such care knows or
16 reasonably should know that the child will be placed at risk of
17 sexual abuse as proscribed by this subsection.

18 H. Any parent or other person who shall willfully or
19 maliciously engage in child sexual exploitation shall, upon
20 conviction, be punished by imprisonment in the custody of the
21 Department of Corrections for a term not exceeding life
22 imprisonment, or by imprisonment in a county jail for a term not
23 exceeding one (1) year, or by a fine of not less than Five Hundred
24 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),

1 or both such fine and imprisonment except as provided in subsection
2 I of this section for a child victim under twelve (12) years of age.
3 Except for persons sentenced to life or life without parole, any
4 person sentenced to imprisonment for two (2) years or more for a
5 violation of this subsection shall be required to serve a term of
6 post-imprisonment supervision pursuant to subparagraph f of
7 paragraph 1 of subsection A of Section 991a of Title 22 of the
8 Oklahoma Statutes under conditions determined by the Department of
9 Corrections. The jury shall be advised that the mandatory post-
10 imprisonment supervision shall be in addition to the actual
11 imprisonment. As used in this subsection, "child sexual
12 exploitation" means the willful or malicious sexual exploitation,
13 which includes but is not limited to allowing, permitting, or
14 encouraging a child under eighteen (18) years of age to engage in
15 prostitution or allowing, permitting, encouraging or engaging in the
16 lewd, obscene or pornographic photographing, filming, or depicting
17 of a child under eighteen (18) years of age by another.

18 I. Any parent or other person who shall willfully or
19 maliciously engage in sexual exploitation of a child under twelve
20 (12) years of age shall, upon conviction, be punished by
21 imprisonment in the custody of the Department of Corrections for a
22 term of not less than twenty-five (25) years nor more than life
23 imprisonment, and by a fine of not less than Five Hundred Dollars
24 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

1 J. Any parent or other person who shall willfully or
2 maliciously engage in enabling child sexual exploitation shall, upon
3 conviction, be punished by imprisonment in the custody of the
4 Department of Corrections for a term not exceeding life
5 imprisonment, or by imprisonment in a county jail for a term not
6 exceeding one (1) year, or by a fine of not less than Five Hundred
7 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),
8 or both such fine and imprisonment. As used in this subsection,
9 "enabling child sexual exploitation" means the causing, procuring or
10 permitting of a willful or malicious act of child sexual
11 exploitation, which includes but is not limited to allowing,
12 permitting, or encouraging a child under eighteen (18) years of age
13 to engage in prostitution or allowing, permitting, encouraging or
14 engaging in the lewd, obscene or pornographic photographing,
15 filming, or depicting of a child under eighteen (18) years of age by
16 another. As used in this subsection, "~~permit~~ permitting" means to
17 authorize or allow for the care of a child by an individual when the
18 person authorizing or allowing such care knows or reasonably should
19 know that the child will be placed at risk of sexual exploitation as
20 proscribed by this subsection.

21 K. Notwithstanding any other provision of law, any parent or
22 other person convicted of forcible anal or oral sodomy, rape, rape
23 by instrumentation, or lewd molestation of a child under fourteen
24 (14) years of age subsequent to a previous conviction for any

1 offense of forcible anal or oral sodomy, rape, rape by
2 instrumentation, or lewd molestation of a child under fourteen (14)
3 years of age shall be punished by ~~death or by~~ imprisonment for life
4 without parole.

5 L. Provided, however, that nothing contained in this section
6 shall prohibit any parent or guardian from using reasonable and
7 ordinary force pursuant to Section 844 of this title.

8 SECTION 12. AMENDATORY 21 O.S. 2011, Section 1115
9 (Section 5, Chapter 455, O.S.L. 2002), is amended to read as
10 follows:

11 Section 1115. Rape in the first degree is a felony punishable
12 by ~~death or~~ imprisonment in the ~~State Penitentiary,~~ custody of the
13 Department of Corrections for a term of not less than five (5)
14 years, except as provided in Section 3 51.1a of this act title, in
15 the discretion of the jury, or in case the jury fails or refuses to
16 fix the punishment then the same shall be pronounced by the court.

17 SECTION 13. AMENDATORY 21 O.S. 2011, Section 1115
18 (Section 124, Chapter 234, O.S.L. 2009), is amended to read as
19 follows:

20 Section 1115. Rape in the first degree is a felony punishable
21 by ~~death or~~ imprisonment in the custody of the Department of
22 Corrections, for a term of not less than five (5) years, life or
23 life without parole. Except for persons sentenced to life or life
24 without parole, any person sentenced to imprisonment for two (2)

1 years or more for a violation of this section shall be required to
2 serve a term of post-imprisonment supervision pursuant to
3 subparagraph f of paragraph 1 of subsection A of Section 991a of
4 Title 22 of the Oklahoma Statutes under conditions determined by the
5 Department of Corrections. The jury shall be advised that the
6 mandatory post-imprisonment supervision shall be in addition to the
7 actual imprisonment. Any person convicted of a second or subsequent
8 violation of subsection A of Section 1114 of this title shall not be
9 eligible for any form of probation. Any person convicted of a third
10 or subsequent violation of subsection A of Section 1114 of this
11 title or of an offense under Section 888 of this title or an offense
12 under Section 1123 of this title or sexual abuse of a child pursuant
13 to Section 843.5 of this title, or any attempt to commit any of
14 these offenses or any combination of these offenses, shall be
15 punished by imprisonment in the custody of the Department of
16 Corrections for life or life without parole.

17 SECTION 14. AMENDATORY 22 O.S. 2011, Section 929, is
18 amended to read as follows:

19 Section 929. A. Upon any appeal of a conviction by the
20 defendant in a noncapital criminal case, the appellate court, if it
21 finds prejudicial error in the sentencing proceeding only, may set
22 aside the sentence rendered and remand the case to the trial court
23 in the jurisdiction in which the defendant was originally sentenced
24 for resentencing. No error in the sentencing proceeding shall

1 result in the reversal of the conviction in a criminal case unless
2 the error directly affected the determination of guilt.

3 B. When a criminal case is remanded for vacation of a sentence,
4 the court may:

5 1. Set the case for a non-jury sentencing proceeding; or

6 2. If the defendant or the prosecutor so requests in writing,
7 impanel a new sentencing jury.

8 C. If a written request for a jury trial is filed within twenty
9 (20) days of the date of the appellate court order, the trial court
10 shall impanel a new jury for the purpose of conducting a new
11 sentencing proceeding.

12 1. All exhibits and a transcript of all testimony and other
13 evidence properly admitted in the prior trial and sentencing shall
14 be admissible in the new sentencing proceeding. Additional relevant
15 evidence may be admitted including testimony of witnesses who
16 testified at the previous trial.

17 2. The provisions of this section are procedural and shall
18 apply retroactively to any defendant sentenced in this state.

19 D. This section shall not be construed to amend or be in
20 conflict with the provisions of Section 701.10 or 701.10a of Title
21 of the Oklahoma Statutes relating to sentencing and resentencing
22 in death penalty cases commenced prior to November 1, 2020; Section
23 ~~438~~ 860.1 of this ~~act~~ title relating to the trial procedure for
24 defendants prosecuted for second or subsequent ~~offense~~ offenses; or

1 the provisions of Sections ~~439~~ 926.1 and ~~440~~ 927.1 of this ~~act~~ title
2 relating to assessment of punishment in the original trial
3 proceedings.

4 SECTION 15. AMENDATORY 22 O.S. 2011, Section 982, as
5 last amended by Section 1, Chapter 326, O.S.L. 2019 (22 O.S. Supp.
6 2019, Section 982), is amended to read as follows:

7 Section 982. A. Whenever a person is convicted of a violent
8 felony offense whether the conviction is for a single offense or
9 part of any combination of offenses, ~~except when the death sentence~~
10 ~~is available as punishment for the offense,~~ the court may, before
11 imposing the sentence, require a presentence investigation be made
12 of the offender by the Department of Corrections. The court shall
13 order the defendant to pay a fee to the Department of Corrections of
14 not less than Fifty Dollars (\$50.00) nor more than Five Hundred
15 Dollars (\$500.00) for the presentence investigation. In hardship
16 cases, the court may reduce the amount of the fee and establish a
17 payment schedule.

18 B. Whenever a person has a prior felony conviction and enters a
19 plea of guilty or nolo contendere to a felony offense other than a
20 violent felony offense, without an agreement by the district
21 attorney regarding the sentence to be imposed, the court may order a
22 presentence investigation be made by the Department of Corrections.
23 The fee provided in subsection A of this section shall apply to
24 persons subject to this subsection.

1 C. Whenever a person has entered a plea of not guilty to a
2 nonviolent felony offense and is found guilty by a court following a
3 non-jury trial, the court may require a presentence investigation be
4 made by the Department of Corrections. The fee provided in
5 subsection A of this section shall apply to persons subject to this
6 subsection.

7 D. When conducting a presentence investigation, the Department
8 shall inquire into the circumstances of the offense and the
9 characteristics of the offender. The information obtained from the
10 investigation shall include, but not be limited to, a voluntary
11 statement from each victim of the offense concerning the nature of
12 the offense and the impact of the offense on the victim and the
13 immediate family of the victim, the amount of the loss suffered or
14 incurred by the victim as a result of the criminal conduct of the
15 offender, and the age, marital status, living arrangements,
16 financial obligations, income, family history and education, prior
17 juvenile and criminal records, associations with other persons
18 convicted of a felony offense, social history, indications of a
19 predisposition to violence or substance abuse, remorse or guilt
20 about the offense or the harm to the victim, job skills and
21 employment history of the offender. The Department shall make a
22 report of information from such investigation to the court,
23 including a recommendation detailing the punishment which is deemed
24 appropriate for both the offense and the offender, and specifically

1 a recommendation for or against probation or suspended sentence.
2 The report of the investigation shall be presented to the judge
3 within a reasonable time, and upon failure to present the report,
4 the judge may proceed with sentencing. Whenever, in the opinion of
5 the court or the Department, it is desirable, the investigation
6 shall include a physical and mental examination or either a physical
7 or mental examination of the offender.

8 E. The district attorney may have a presentence investigation
9 made by the Department on each person charged with a violent felony
10 offense and entering a plea of guilty or a plea of nolo contendere
11 as part of or in exchange for a plea agreement for a violent felony
12 offense. The presentence investigation shall be completed before
13 the terms of the plea agreement are finalized. The court shall not
14 approve the terms of any plea agreement without reviewing the
15 presentence investigation report to determine whether or not the
16 terms of the sentence are appropriate for both the offender and the
17 offense. The fee provided in subsection A of this section shall
18 apply to persons subject to this subsection and shall be a condition
19 of the plea agreement and sentence.

20 F. The presentence investigation reports specified in this
21 section shall not be referred to, or be considered, in any appeal
22 proceedings. Before imposing a sentence, the court shall advise the
23 defendant, counsel for the defendant, and the district attorney of
24 the factual contents and conclusions of the presentence

1 investigation report. The court shall afford the offender a fair
2 opportunity to controvert the findings and conclusions of the
3 ~~reports~~ report at the time of sentencing. If either the defendant
4 or the district attorney desires, a hearing shall be set by the
5 court to allow both parties an opportunity to offer evidence proving
6 or disproving any finding contained in a report, which shall be a
7 hearing in mitigation or aggravation of punishment.

8 G. The required presentence investigation and report may be
9 waived upon written waiver by the district attorney and the
10 defendant and upon approval by the ~~Court~~ court.

11 H. As used in this section, "violent felony offense" means:

12 1. Arson in the first degree;

13 2. Assault with a dangerous weapon, battery with a dangerous
14 weapon or assault and battery with a dangerous weapon;

15 3. Aggravated assault and battery on a police officer, sheriff,
16 highway patrol officer, or any other officer of the law;

17 4. Assault with intent to kill, or shooting with intent to
18 kill;

19 5. Assault with intent to commit a felony, or use of a firearm
20 to commit a felony;

21 6. Assault while masked or disguised;

22 7. Burglary in the first degree or burglary with explosives;

23 8. Child beating or maiming;

24 9. Forcible sodomy;

- 1 10. Kidnapping, or kidnapping for extortion;
- 2 11. Lewd or indecent proposition or lewd or indecent acts with
- 3 a child;
- 4 12. Manslaughter in the first or second degrees;
- 5 13. Murder in the first or second degrees;
- 6 14. Rape in the first or second degrees, or rape by
- 7 instrumentation;
- 8 15. Robbery in the first or second degrees, or robbery by two
- 9 or more persons, or robbery with a dangerous weapon; or
- 10 16. Any attempt, solicitation or conspiracy to commit any of
- 11 the above enumerated offenses.

12 SECTION 16. AMENDATORY 22 O.S. 2011, Section 991a-20, is

13 amended to read as follows:

14 Section 991a-20. A. Every person who, having been convicted of

15 any offense against an elderly or incapacitated person, as

16 enumerated in Section ~~445~~ 991a-16 of this ~~act~~ title, commits any

17 crime against an elderly or incapacitated person after such

18 conviction is punishable as follows:

19 1. If the offense of which such person is subsequently

20 convicted is such that upon a first conviction an offender would be

21 punishable by imprisonment in the ~~State Penitentiary~~ custody of the

22 Department of Corrections for ~~any~~ a term exceeding five (5) years,

23 such person is punishable by imprisonment in the ~~State Penitentiary~~

24

1 custody of the Department of Corrections for a term of not less than
2 ten (10) years; or

3 2. If such subsequent offense is such that upon a first
4 conviction the offender would be punishable by imprisonment in the
5 ~~State Penitentiary~~ custody of the Department of Corrections for five
6 (5) years or less, then the person convicted of such subsequent
7 offense is punishable by imprisonment in the ~~State Penitentiary~~
8 custody of the Department of Corrections for a term of not exceeding
9 fifteen (15) years.

10 B. Every person who, having been twice convicted of felony
11 offenses against an elderly or incapacitated person, commits a third
12 felony offense against an elderly or incapacitated person within ten
13 (10) years of the date following the completion of the execution of
14 the first sentence, shall be punishable by imprisonment in the ~~State~~
15 ~~Penitentiary~~ custody of the Department of Corrections for a term of
16 not less than twenty (20) years.

17 C. All felony offenses arising out of the same transaction or
18 occurrence or series of events closely related in time and location
19 shall be considered as one offense for the purposes of this section.

20 D. Nothing in this section shall affect the punishment by death
21 for cases where a judgment of death is rendered prior to November 1,
22 2020, or life imprisonment without parole in all crimes now or
23 hereafter made punishable by ~~death~~ or life imprisonment without
24 parole.

1 SECTION 17. AMENDATORY 22 O.S. 2011, Section 1001, is
2 amended to read as follows:

3 Section 1001. ~~When~~ For cases where a judgment of death is
4 rendered prior to November 1, 2020, the judge must sign and deliver
5 to the sheriff of the county a warrant duly attested by the clerk,
6 under the seal of the court, stating the conviction and judgment and
7 appointing a day on which the judgment is to be executed, which must
8 be not less than sixty (60) nor more than ninety (90) days from the
9 time of the judgment and must direct the sheriff to deliver the
10 defendant within ten (10) days from the time of judgment to the
11 warden of the ~~state prison~~ Oklahoma State Penitentiary at McAlester,
12 in this state, for execution.

13 SECTION 18. AMENDATORY 22 O.S. 2011, Section 1001.1, is
14 amended to read as follows:

15 Section 1001.1 A. The execution of the judgment in cases
16 where, prior to November 1, 2020, a sentence of death is imposed
17 shall be ordered by the Oklahoma Court of Criminal Appeals to be
18 carried out thirty (30) days after the defendant fails to meet any
19 of the following time conditions:

20 1. If a defendant does not file a petition for writ of
21 certiorari in the United States Supreme Court within ninety (90)
22 days from the issuance of the mandate in the original state direct
23 appeal unless a first application for post-conviction relief is
24 pending;

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

9 3. If a defendant does not file a writ of certiorari to the
10 United States Supreme Court within ninety (90) days from a denial of
11 state post-conviction relief by the Oklahoma Court of Criminal
12 Appeals;

13 4. If a defendant does not file the first petition for a
14 federal writ of habeas corpus within sixty (60) days from a denial
15 of the certiorari petition or from a decision by the United States
16 Supreme Court from post-conviction relief;

17 5. If a defendant does not file an appeal in the United States
18 Court of Appeals for the Tenth Circuit from a denial of a federal
19 writ of habeas corpus within seventy (70) days; or

20 6. If a defendant does not file a petition for writ of
21 certiorari with the United States Supreme Court from a denial of the
22 appeal of the federal writ of habeas corpus within ninety (90) days.

23 B. The filing of a petition for rehearing in any federal court
24 shall not serve to stay the execution dates or the time restraints

1 set forth in ~~the above~~ subsection A of this section unless the
2 defendant makes the showing set forth in subsection C of this
3 section. The provisions of subsection A of this section do not
4 apply to second or subsequent petitions or appeals filed in any
5 court. The filing of a second or subsequent petition or appeal in
6 any court does not prevent the setting of an execution date.

7 C. When an action challenging the conviction or sentence of
8 death is pending before it, the Oklahoma Court of Criminal Appeals
9 may stay an execution date, or issue any order which effectively
10 stays an execution date only upon a showing by the defendant that
11 there exists a significant possibility of reversal of the
12 ~~defendant's~~ conviction of the defendant, or vacation of the
13 ~~defendant's~~ sentence of the defendant, and that irreparable harm
14 will result if no stay is issued.

15 D. Should a stay of execution be issued by any state or federal
16 court, a new execution date shall be set by operation of law sixty
17 (60) days after the dissolution of the stay of execution. The new
18 execution date shall be set by the Oklahoma Court of Criminal
19 Appeals without necessity of application by the state, but the
20 Attorney General, on behalf of the state, shall bring to the
21 attention of the Oklahoma Court of Criminal Appeals the fact of the
22 dissolution of a stay of execution and suggest the appropriateness
23 of the setting of a new execution date.

24

1 E. After an execution date has been set pursuant to the
2 provisions of this section, should a stay of execution be issued by
3 any state or federal court, a new execution date shall be set by
4 operation of law thirty (30) days after the dissolution of the stay
5 of execution. The new execution date shall be set by the Oklahoma
6 Court of Criminal Appeals without necessity of application by the
7 state, but the Attorney General, on behalf of the state, shall bring
8 to the attention of the Oklahoma Court of Criminal Appeals the fact
9 of the dissolution of a stay of execution and suggest the
10 appropriateness of setting a new execution date.

11 F. After an execution date has been set pursuant to the
12 provisions of this section, should a stay of execution be issued by
13 any state or federal court and then vacated by such court, the
14 sentence of death shall be carried out as ordered prior to the
15 issuance of such vacated stay of execution. If the prior execution
16 date has expired prior to the vacation of the stay of execution, a
17 new execution date shall be set by operation of law thirty (30) days
18 after the vacation of the stay of execution. The new execution date
19 shall be set by the Oklahoma Court of Criminal Appeals without
20 necessity of application by the state, but the Attorney General, on
21 behalf of the state, shall bring to the attention of the Oklahoma
22 Court of Criminal Appeals the fact of a vacation of the stay of
23 execution and suggest the appropriateness of the setting of a new
24 execution date.

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

11 SECTION 19. AMENDATORY 22 O.S. 2011, Section 1002, is
12 amended to read as follows:

13 Section 1002. ~~The~~ For cases commenced prior to November 1,
14 2020, the judge of a court at which a conviction requiring a
15 judgment of death is had, must, immediately after the conviction,
16 transmit to the Governor, by mail or otherwise, a statement of the
17 conviction and judgment, and of the testimony given at the trial.

18 SECTION 20. AMENDATORY 22 O.S. 2011, Section 1014, as
19 last amended by Section 1, Chapter 348, O.S.L. 2017 (22 O.S. Supp.
20 2019, Section 1014), is amended to read as follows:

21 Section 1014. A. ~~The~~ For cases commenced prior to November 1,
22 2020, the punishment of death shall be carried out by the
23 administration of a lethal quantity of a drug or drugs until death
24 is pronounced by a licensed physician according to accepted

1 standards of medical practice. For purposes of this subsection, the
2 Uniform Controlled Dangerous Substances Act shall not apply to the
3 Department of Corrections or to any person who participates in the
4 execution or administers one or more controlled dangerous
5 substances.

6 B. If the execution of the sentence of death as provided in
7 subsection A of this section is held unconstitutional by an
8 appellate court of competent jurisdiction or is otherwise
9 unavailable, then the sentence of death shall be carried out by
10 nitrogen hypoxia.

11 C. If the execution of the sentence of death as provided in
12 subsections A and B of this section is held unconstitutional by an
13 appellate court of competent jurisdiction or is otherwise
14 unavailable, then the sentence of death shall be carried out by
15 electrocution.

16 D. If the execution of the sentence of death as provided in
17 subsections A, B and C of this section is held unconstitutional by
18 an appellate court of competent jurisdiction or is otherwise
19 unavailable, then the sentence of death shall be carried out by
20 firing squad.

21 SECTION 21. AMENDATORY 22 O.S. 2011, Section 1015, is
22 amended to read as follows:

23 Section 1015. A. A In cases where a defendant has been
24 sentenced to death prior to November 1, 2020, the judgment of death

1 ~~must~~ shall be executed at the Oklahoma State Penitentiary at
2 McAlester, Oklahoma, said prison to be designated by the court by
3 which judgment is to be rendered.

4 B. The judgment of execution shall take place under the
5 authority of the Director of the Department of Corrections and the
6 warden must be present along with other necessary prison and
7 corrections officials to carry out the execution. The warden must
8 invite the presence of a physician and the district attorney of the
9 county in which the crime occurred or a designee, the judge who
10 presided at the trial issuing the sentence of death, the chief of
11 police of the municipality in which the crime occurred, if
12 applicable, and lead law enforcement officials of any state, county
13 or local law enforcement agency who investigated the crime or
14 testified in any court or clemency proceeding related to the crime,
15 including but not limited to the sheriff of the county wherein the
16 conviction was had, to witness the execution; in addition, the
17 Cabinet Secretary of Safety and Security must be invited as well as
18 any other personnel or correctional personnel deemed appropriate and
19 approved by the Director. The warden shall, at the request of the
20 defendant, permit the presence of such ministers chosen by the
21 defendant, not exceeding two, and any persons, relatives or friends,
22 not to exceed five, as the defendant may name; provided, reporters
23 from recognized members of the news media will be admitted upon
24 proper identification, application and approval of the warden. The

1 identity of all persons who participate in or administer the
2 execution process and persons who supply the drugs, medical supplies
3 or medical equipment for the execution shall be confidential and
4 shall not be subject to discovery in any civil or criminal
5 proceedings. The purchase of drugs, medical supplies or medical
6 equipment necessary to carry out the execution shall not be subject
7 to the provisions of The Oklahoma Central Purchasing Act.

8 C. In the event the defendant has been sentenced to death in
9 one or more criminal proceedings in this state, or has been
10 sentenced to death in this state and by one or more courts of
11 competent jurisdiction in another state or pursuant to federal
12 authority, or any combination thereof, and this state has priority
13 to execute the defendant, the warden must invite the prosecuting
14 attorney or his or her designee, the judge, and the chief law
15 enforcement official from each jurisdiction where any death sentence
16 has issued. The above mentioned officials shall be allowed to
17 witness the execution or view the execution by closed_circuit
18 television as determined by the Director of the Department of
19 Corrections.

20 D. A place shall be provided at the Oklahoma State Penitentiary
21 at McAlester so that individuals who are eighteen (18) years of age
22 or older and who are ~~members of the~~ immediate family members of any
23 deceased victim of the defendant may witness the execution. The
24 immediate family members shall be allowed to witness the execution

1 from an area that is separate from the area to which other non-
2 family-member witnesses are admitted; provided, however, if there
3 are multiple deceased victims, the Department shall not be required
4 to provide separate areas for each family of each deceased victim.
5 If facilities are not capable or sufficient to provide all immediate
6 family members with a direct view of the execution, the Department
7 of Corrections may broadcast the execution by means of a closed-
8 circuit television system to an area in which other immediate family
9 members may be located.

10 Immediate family members may request individuals not directly
11 related to the deceased victim but who serve a close supporting role
12 or professional role to the deceased victim or an immediate family
13 member, including, but not limited to, a minister or licensed
14 counselor, to accompany the immediate family member at the
15 execution. The warden in consultation with the Director shall
16 approve or disapprove such requests. Provided further, the
17 Department may set a limit on the number of witnesses or viewers
18 within occupancy limits.

19 As used in this section, "~~members of the~~ immediate family
20 members" means the spouse, a child by birth or adoption, a
21 stepchild, a parent, a grandparent, a grandchild, a sibling of a
22 deceased victim, or the spouse of any immediate family member
23 specified in this subsection.

24

1 E. Any surviving victim of the defendant who is eighteen (18)
2 years of age or older may view the execution by closed_circuit
3 television with the approval of both the Director of the Department
4 of Corrections and the warden. The Director and warden shall
5 prioritize persons to view the execution, including immediate family
6 members, surviving victims, and supporting persons, and may set a
7 limit on the number of viewers within occupancy limits. Any
8 surviving victim approved to view the execution of the defendant may
9 have an accompanying support person as provided for members of the
10 immediate family of a deceased victim. As used in this subsection,
11 "surviving victim" means any person who suffered serious harm or
12 injury due to the criminal acts of the defendant of which the
13 defendant has been convicted in a court of competent jurisdiction.

14 SECTION 22. AMENDATORY 22 O.S. 2011, Section 1089, is
15 amended to read as follows:

16 Section 1089. A. ~~The~~ For cases commenced prior to November 1,
17 2020, the application for post-conviction relief of a defendant who
18 is under the sentence of death in one or more counts and whose death
19 sentence has been affirmed or is being reviewed by the Oklahoma
20 Court of Criminal Appeals in accordance with the provisions of
21 Section 701.13 of Title 21 of the Oklahoma Statutes shall be
22 expedited as provided in this section. The provisions of this
23 section also apply to noncapital sentences in a case in which the
24 defendant has received one or more sentences of death.

1 B. The Oklahoma Indigent Defense System shall represent all
2 indigent defendants in capital cases seeking post-conviction relief
3 upon appointment by the appropriate district court after a hearing
4 determining the indigency of any such defendant. When the Oklahoma
5 Indigent Defense System or another attorney has been appointed to
6 represent an indigent defendant in an application for post-
7 conviction relief, the Clerk of the Oklahoma Court of Criminal
8 Appeals shall include in its notice to the district court clerk, as
9 required by Section 1054 of this title, that an additional certified
10 copy of the appeal record is to be transmitted to the Oklahoma
11 Indigent Defense System or the other attorney.

12 C. The only issues that may be raised in an application for
13 post-conviction relief are those that:

14 1. Were not and could not have been raised in a direct appeal;
15 and

16 2. Support a conclusion either that the outcome of the trial
17 would have been different but for the errors or that the defendant
18 is factually innocent.

19 The applicant shall state in the application specific facts
20 explaining as to each claim why it was not or could not have been
21 raised in a direct appeal and how it supports a conclusion that the
22 outcome of the trial would have been different but for the errors or
23 that the defendant is factually innocent.

24

1 D. 1. The application for post-conviction relief shall be
2 filed in the Oklahoma Court of Criminal Appeals within ninety (90)
3 days from the date the ~~appellee's~~ brief on direct appeal of the
4 appellee is filed or, if a reply brief is filed, ninety (90) days
5 from the filing of that reply brief with the Oklahoma Court of
6 Criminal Appeals on the direct appeal. Where the ~~appellant's~~
7 original brief on direct appeal of the appellant has been filed
8 prior to November 1, 1995, and no application for post-conviction
9 relief has been filed, any application for post-conviction relief
10 must be filed in the Oklahoma Court of Criminal Appeals within one
11 hundred eighty (180) days of November 1, 1995. The Oklahoma Court
12 of Criminal Appeals may issue orders establishing briefing schedules
13 or enter any other orders necessary to extend the time limits under
14 this section in cases where the original brief on direct appeal has
15 been filed prior to November 1, 1995.

16 2. All grounds for relief that were available to the applicant
17 before the last date on which an application could be timely filed
18 not included in a timely application shall be deemed waived.

19 No application may be amended or supplemented after the time
20 specified under this section. Any amended or supplemental
21 application filed after the time specified under this section shall
22 be treated by the Oklahoma Court of Criminal Appeals as a subsequent
23 application.

24

1 3. Subject to the specific limitations of this section, the
2 Oklahoma Court of Criminal Appeals may issue any orders as to
3 discovery or any other orders necessary to facilitate post-
4 conviction review.

5 4. a. The Oklahoma Court of Criminal Appeals shall review
6 the application to determine:

7 (1) whether controverted, previously unresolved
8 factual issues material to the legality of the
9 ~~applicant's~~ confinement of the applicant exist,

10 (2) whether the ~~applicant's~~ grounds were or could
11 have been previously raised by the applicant, and

12 (3) whether relief may be granted under this act.

13 b. For purposes of this subsection, a ground could not
14 have been previously raised if:

15 (1) it is a claim of ineffective assistance of trial
16 counsel involving a factual basis that was not
17 ascertainable through the exercise of reasonable
18 diligence on or before the time of the direct
19 appeal, or

20 (2) it is a claim contained in an original timely
21 application for post-conviction relief relating
22 to ineffective assistance of appellate counsel.
23
24

1 All claims of ineffective assistance of counsel shall be governed by
2 clearly established law as determined by the United States Supreme
3 Court.

4 If the Oklahoma Court of Criminal Appeals determines that
5 controverted, previously unresolved factual issues material to the
6 legality of the applicant's confinement do not exist, or that the
7 claims were or could have been previously raised, or that relief may
8 not be granted under this act and enters an order to that effect,
9 the Court shall make findings of fact and conclusions of law or may
10 order the parties to file proposed findings of fact and conclusions
11 of law for the Court to consider on or before a date set by the
12 Court that is not later than thirty (30) days after the date the
13 order is issued. The Oklahoma Court of Criminal Appeals shall make
14 appropriate written findings of fact and conclusions of law not
15 later than fifteen (15) days after the date the parties filed
16 proposed findings.

17 5. If the Oklahoma Court of Criminal Appeals determines that
18 controverted, previously unresolved factual issues material to the
19 legality of the ~~applicant's~~ confinement of the applicant do exist,
20 and that the application meets the other requirements of paragraph 4
21 of this subsection, the Court shall enter an order to the district
22 court that imposed the sentence designating the issues of fact to be
23 resolved and the method by which the issues shall be resolved.

24

1 The district court shall not permit any amendments or
2 supplements to the issues remanded by the Oklahoma Court of Criminal
3 Appeals except upon motion to and order of the Oklahoma Court of
4 Criminal Appeals subject to the limitations of this section.

5 The Oklahoma Court of Criminal Appeals shall retain jurisdiction
6 of all cases remanded pursuant to this act.

7 6. The ~~district attorney's~~ office of the district attorney
8 shall have twenty (20) days after the issues are remanded to the
9 district court within which to file a response. The district court
10 may grant one extension of twenty (20) days for good cause shown and
11 may issue any orders necessary to facilitate post-conviction review
12 pursuant to the remand order of the Oklahoma Court of Criminal
13 Appeals. Any applications for extension beyond the twenty (20) days
14 shall be presented to the Oklahoma Court of Criminal Appeals. If
15 the district court determines that an evidentiary hearing should be
16 held, that hearing shall be held within thirty (30) days from the
17 date that the state filed its response. The district court shall
18 file its decision together with findings of fact and conclusions of
19 law with the Oklahoma Court of Criminal Appeals within forty-five
20 (45) days from the date that the state filed its response or within
21 forty-five (45) days from the date of the conclusion of the
22 evidentiary hearing.

23 7. Either party may seek review by the Oklahoma Court of
24 Criminal Appeals of the ~~district court's~~ determination by the

1 district court of the issues remanded by the Oklahoma Court of
2 Criminal Appeals within ten (10) days from the entry of judgment.
3 Such party shall file a notice of intent to seek review and a
4 designation of record in the district court within ten (10) days
5 from the entry of judgment. A copy of the notice of intent to seek
6 review and the designation of the record shall be served on the
7 court reporter, the petitioner, the district attorney, and the
8 Attorney General, and shall be filed with the Oklahoma Court of
9 Criminal Appeals. A petition in error shall be filed with the
10 Oklahoma Court of Criminal Appeals by the party seeking review
11 within thirty (30) days from the entry of judgment. If an
12 evidentiary hearing was held, the court reporter shall prepare and
13 file all transcripts necessary for the appeal within sixty (60) days
14 from the date the notice and designation of record are filed. The
15 ~~petitioner's~~ brief-in-chief of the petitioner shall be filed within
16 forty-five (45) days from the date the transcript is filed in the
17 Oklahoma Court of Criminal Appeals or, if no evidentiary hearing was
18 held, within forty-five (45) days from the date of the filing of the
19 notice. The respondent shall have twenty (20) days thereafter to
20 file a response brief. The district court clerk shall file the
21 records on appeal with the Oklahoma Court of Criminal Appeals on or
22 before the date the ~~petitioner's~~ brief-in-chief of the petitioner is
23 due. The Oklahoma Court of Criminal Appeals shall issue an opinion
24 in the case within one hundred twenty (120) days of the filing of

1 the response brief or at the time the direct appeal is decided. If
2 no review is sought within the time specified in this section, the
3 Oklahoma Court of Criminal Appeals may adopt the findings of the
4 district court and enter an order within fifteen (15) days of the
5 time specified for seeking review or may order additional briefing
6 by the parties. In no event shall the Oklahoma Court of Criminal
7 Appeals grant post-conviction relief before giving the state an
8 opportunity to respond to any and all claims raised to the Court.

9 8. If an original application for post-conviction relief is
10 untimely or if a subsequent application for post-conviction relief
11 is filed after filing an original application, the Oklahoma Court of
12 Criminal Appeals may not consider the merits of or grant relief
13 based on the subsequent or untimely original application unless:

14 a. the application contains claims and issues that have
15 not been and could not have been presented previously
16 in a timely original application or in a previously
17 considered application filed under this section,
18 because the legal basis for the ~~claim~~ claims was
19 unavailable, or

20 b. (1) the application contains sufficient specific
21 facts establishing that the current claims and
22 issues have not and could not have been presented
23 previously in a timely original application or in
24 a previously considered application filed under

1 this section, because the factual basis for the
2 ~~claim~~ claims was unavailable as it was not
3 ascertainable through the exercise of reasonable
4 diligence on or before that date, and

5 (2) the facts underlying the claim, if proven and
6 viewed in light of the evidence as a whole, would
7 be sufficient to establish by clear and
8 convincing evidence that, but for the alleged
9 error, no reasonable fact finder would have found
10 the applicant guilty of the underlying offense or
11 would have rendered the penalty of death.

12 9. For purposes of this act, a legal basis of a claim is
13 unavailable on or before a date described by this subsection if the
14 legal basis:

- 15 a. was not recognized by or could not have been
16 reasonably formulated from a final decision of the
17 United States Supreme Court, a court of appeals of the
18 United States, or a court of appellate jurisdiction of
19 this state on or before that date, or
20 b. is a new rule of constitutional law that was given
21 retroactive effect by the United States Supreme Court
22 or a court of appellate jurisdiction of this state and
23 had not been announced on or before that date.
24

1 E. All matters not specifically governed by the provisions of
2 this section shall be subject to the provisions of the Post-
3 Conviction Procedure Act. If the provisions of this act conflict
4 with the provisions of the Post-Conviction Procedure Act, the
5 provisions of this act shall govern.

6 SECTION 23. This act shall become effective November 1, 2020.

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8 57-2-9088 GRS 12/05/19

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