

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3383 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Anthony Moore

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 3383

By: Moore

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2021, Section 1080, which relates to the Post-Conviction Procedure Act; requiring persons filing writs of habeas corpus to utilize procedures provided in the Post-Conviction Procedure Act; establishing time limitation for filing original or subsequent application for post-conviction relief; providing guidelines for determining limitation periods; making application and time limitation provisions applicable to post-conviction applications filed on or after certain effective date; amending 22 O.S. 2021, Sections 1086 and 1089, which relate to the Post-Conviction Procedure Act; requiring claims challenging a trial court's jurisdiction to be raised in the original, supplemental or amended application for post-conviction relief; clarifying manner in which the Court of Criminal Appeals may consider the merits of or grant relief based on an application; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 1080, is amended to read as follows:

1 Section 1080. Any person who has been convicted of, or
2 sentenced for, a crime and who claims:

3 ~~(a) that~~ 1. That the conviction or the sentence was in
4 violation of the Constitution of the United States or the
5 Constitution or laws of this state;

6 ~~(b) that~~ 2. That the court was without jurisdiction to impose
7 sentence;

8 ~~(c) that~~ 3. That the sentence exceeds the maximum authorized by
9 law;

10 ~~(d) that~~ 4. That there exists evidence of material facts, not
11 previously presented and heard, that requires vacation of the
12 conviction or sentence in the interest of justice;

13 ~~(e) that his~~ 5. That the sentence has expired, ~~his~~ the
14 suspended sentence, probation, parole, or conditional release
15 unlawfully revoked, or he or she is otherwise unlawfully held in
16 custody or other restraint; or

17 ~~(f) that~~ 6. That the conviction or sentence is otherwise
18 subject to collateral attack upon any ground of alleged error
19 heretofore available under any common law, statutory or other writ,
20 motion, petition, proceeding or remedy~~+~~,
21

22 may institute a proceeding under ~~this act~~ the Post-Conviction
23 Procedure Act in the court in which the judgment and sentence on
24 conviction was imposed to secure the appropriate relief. Excluding
a timely appeal, ~~this act~~ the Post-Conviction Procedure Act

1 encompasses and replaces all common law and statutory methods of
2 challenging a conviction or sentence including, but not limited to,
3 writs of habeas corpus.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1080.1 of Title 22, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A one-year period of limitation shall apply to the filing of
8 any application for post-conviction relief, whether an original
9 application or a subsequent application. The limitation period
10 shall run from the latest of:

11 1. The date on which the judgment of conviction or revocation
12 of suspended sentence became final by the conclusion of direct
13 review by the Oklahoma Court of Criminal Appeals or the expiration
14 of the time for seeking such review by the Oklahoma Court of
15 Criminal Appeals;

16 2. The date on which the Governor revoked parole or conditional
17 release, if the petitioner is challenging the lawfulness of said
18 revocation;

19 3. The date on which any impediment to filing an application
20 created by a state actor in violation of the Constitution of the
21 United States or the Constitution of the State of Oklahoma, or laws
22 of the State of Oklahoma, is removed, if the petitioner was
23 prevented from filing by such action;

1 4. The date on which the constitutional right asserted was
2 initially recognized by the United States Supreme Court, if the
3 right has been newly recognized by the United States Supreme Court
4 and made retroactively applicable to cases on collateral review; or

5 5. The date on which the factual predicate of the claim or
6 claims presented could have been discovered through the exercise of
7 due diligence.

8 B. Subject to the exceptions provided for in this section, this
9 limitation period shall apply irrespective of the nature of the
10 claims raised in the application and shall include jurisdictional
11 claims that the trial court lacked subject-matter jurisdiction.

12 C. The provisions of this section shall apply to any post-
13 conviction application filed on or after the effective date of this
14 act.

15 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1086, is
16 amended to read as follows:

17 Section 1086. All grounds for relief available to an applicant
18 under ~~this act~~ the Post-Conviction Procedure Act, including claims
19 challenging the jurisdiction of the trial court, must be raised in
20 his or her original, supplemental or amended application. Any
21 ground finally adjudicated or not so raised, or knowingly,
22 voluntarily and intelligently waived in the proceeding that resulted
23 in the conviction or sentence or in any other proceeding the
24 applicant has taken to secure relief may not be the basis for a

1 subsequent application, unless the court finds a ground for relief
2 asserted which for sufficient reason was not asserted or was
3 inadequately raised in the prior application.

4 SECTION 4. AMENDATORY 22 O.S. 2021, Section 1089, is
5 amended to read as follows:

6 Section 1089. A. The application for post-conviction relief of
7 a defendant who is under the sentence of death in one or more counts
8 and whose death sentence has been affirmed or is being reviewed by
9 the Court of Criminal Appeals in accordance with the provisions of
10 Section 701.13 of Title 21 of the Oklahoma Statutes shall be
11 expedited as provided in this section. The provisions of this
12 section also apply to noncapital sentences in a case in which the
13 defendant has received one or more sentences of death.

14 B. The Oklahoma Indigent Defense System shall represent all
15 indigent defendants in capital cases seeking post-conviction relief
16 upon appointment by the appropriate district court after a hearing
17 determining the indigency of any such defendant. When the Oklahoma
18 Indigent Defense System or another attorney has been appointed to
19 represent an indigent defendant in an application for post-
20 conviction relief, the Clerk of the Court of Criminal Appeals shall
21 include in its notice to the district court clerk, as required by
22 Section 1054 of this title, that an additional certified copy of the
23 appeal record is to be transmitted to the Oklahoma Indigent Defense
24 System or the other attorney.

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

3 1. Were not and could not have been raised in a direct appeal;
4 and

5 2. Support a conclusion either that the outcome of the trial
6 would have been different but for the errors or that the defendant
7 is factually innocent.

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

13 D. 1. The application for post-conviction relief shall be
14 filed in the Court of Criminal Appeals within ninety (90) days from
15 the date the appellee's brief on direct appeal is filed or, if a
16 reply brief is filed, ninety (90) days from the filing of that reply
17 brief with the Court of Criminal Appeals on the direct appeal.
18 Where the appellant's original brief on direct appeal has been filed
19 prior to November 1, 1995, and no application for post-conviction
20 relief has been filed, any application for post-conviction relief
21 must be filed in the Court of Criminal Appeals within one hundred
22 eighty (180) days of November 1, 1995. The Court of Criminal
23 Appeals may issue orders establishing briefing schedules or enter
24 any other orders necessary to extend the time limits under this

1 section in cases where the original brief on direct appeal has been
2 filed prior to November 1, 1995.

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

6 No application may be amended or supplemented after the time
7 specified under this section. Any amended or supplemental
8 application filed after the time specified under this section shall
9 be treated by the Court of Criminal Appeals as a subsequent
10 application.

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

14 4. a. The Court of Criminal Appeals shall review the
15 application to determine:

16 (1) whether controverted, previously unresolved
17 factual issues material to the legality of the
18 applicant's confinement exist,

19 (2) whether the applicant's grounds were or could
20 have been previously raised, and

21 (3) whether relief may be granted under ~~this act~~ the
22 Post-Conviction Procedure Act.

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

1 (1) it is a claim of ineffective assistance of trial
2 counsel involving a factual basis that was not
3 ascertainable through the exercise of reasonable
4 diligence on or before the time of the direct
5 appeal, or

6 (2) it is a claim contained in an original timely
7 application for post-conviction relief relating
8 to ineffective assistance of appellate counsel.

9 All claims of ineffective assistance of counsel shall be governed by
10 clearly established law as determined by the United States Supreme
11 Court.

12 If the Court of Criminal Appeals determines that controverted,
13 previously unresolved factual issues material to the legality of the
14 applicant's confinement do not exist, or that the claims were or
15 could have been previously raised, or that relief may not be granted
16 under ~~this act~~ the Post-Conviction Procedure Act and enters an order
17 to that effect, the Court shall make findings of fact and
18 conclusions of law or may order the parties to file proposed
19 findings of fact and conclusions of law for the Court to consider on
20 or before a date set by the Court that is not later than thirty (30)
21 days after the date the order is issued. The Court of Criminal
22 Appeals shall make appropriate written findings of fact and
23 conclusions of law not later than fifteen (15) days after the date
24 the parties filed proposed findings.

1 5. If the Court of Criminal Appeals determines that
2 controverted, previously unresolved factual issues material to the
3 legality of the applicant's confinement do exist, and that the
4 application meets the other requirements of paragraph 4 of this
5 subsection, the Court shall enter an order to the district court
6 that imposed the sentence designating the issues of fact to be
7 resolved and the method by which the issues shall be resolved.

8 The district court shall not permit any amendments or
9 supplements to the issues remanded by the Court of Criminal Appeals
10 except upon motion to and order of the Court of Criminal Appeals
11 subject to the limitations of this section.

12 The Court of Criminal Appeals shall retain jurisdiction of all
13 cases remanded pursuant to ~~this act~~ the Post-Conviction Procedure
14 Act.

15 6. The district attorney's office shall have twenty (20) days
16 after the issues are remanded to the district court within which to
17 file a response. The district court may grant one extension of
18 twenty (20) days for good cause shown and may issue any orders
19 necessary to facilitate post-conviction review pursuant to the
20 remand order of the Court of Criminal Appeals. Any applications for
21 extension beyond the twenty (20) days shall be presented to the
22 Court of Criminal Appeals. If the district court determines that an
23 evidentiary hearing should be held, that hearing shall be held
24 within thirty (30) days from the date that the state filed its

1 response. The district court shall file its decision together with
2 findings of fact and conclusions of law with the Court of Criminal
3 Appeals within forty-five (45) days from the date that the state
4 filed its response or within forty-five (45) days from the date of
5 the conclusion of the evidentiary hearing.

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

1 (20) days thereafter to file a response brief. The district court
2 clerk shall file the records on appeal with the Court of Criminal
3 Appeals on or before the date the petitioner's brief-in-chief is
4 due. The Court of Criminal Appeals shall issue an opinion in the
5 case within one hundred twenty (120) days of the filing of the
6 response brief or at the time the direct appeal is decided. If no
7 review is sought within the time specified in this section, the
8 Court of Criminal Appeals may adopt the findings of the district
9 court and enter an order within fifteen (15) days of the time
10 specified for seeking review or may order additional briefing by the
11 parties. In no event shall the Court of Criminal Appeals grant
12 post-conviction relief before giving the state an opportunity to
13 respond to any and all claims raised to the Court.

14 8. If an original application for post-conviction relief is
15 untimely or if a subsequent application for post-conviction relief
16 is filed after filing an original application, the Court of Criminal
17 Appeals may not consider the merits of or grant relief based on the
18 ~~subsequent or~~ untimely original application, or a subsequent
19 application, unless:

- 20 a. the application contains claims and issues that have
21 not been and could not have been presented previously
22 in a timely original application or in a previously
23 considered application filed under this section,
24

1 because the legal basis for the claim was unavailable,
2 or

3 b. (1) the application contains sufficient specific
4 facts establishing that the current claims and
5 issues have not and could not have been presented
6 previously in a timely original application or in
7 a previously considered application filed under
8 this section, because the factual basis for the
9 claim was unavailable as it was not ascertainable
10 through the exercise of reasonable diligence on
11 or before that date, and

12 (2) the facts underlying the claim, if proven and
13 viewed in light of the evidence as a whole, would
14 be sufficient to establish by clear and
15 convincing evidence that, but for the alleged
16 error, no reasonable fact finder would have found
17 the applicant guilty of the underlying offense or
18 would have rendered the penalty of death.

19 The provisions of this paragraph shall apply irrespective of the
20 nature of the claims raised in the application and shall include
21 jurisdictional claims. The provisions of this paragraph shall also
22 apply to any post-conviction application filed on or after the
23 effective date of this act.
24

1 9. For purposes of ~~this act~~ the Post-Conviction Procedure Act,
2 a legal basis of a claim is unavailable on or before a date
3 described by this subsection if the legal basis:

4 a. was not recognized by or could not have been
5 reasonably formulated from a final decision of the
6 United States Supreme Court, a court of appeals of the
7 United States, or a court of appellate jurisdiction of
8 this state on or before that date, or

9 b. is a new rule of constitutional law that was given
10 retroactive effect by the United States Supreme Court
11 or a court of appellate jurisdiction of this state and
12 had not been announced on or before that date.

13 E. All matters not specifically governed by the provisions of
14 this section shall be subject to the provisions of the Post-
15 Conviction Procedure Act. If the provisions of this ~~act~~ section
16 conflict with the provisions of the Post-Conviction Procedure Act,
17 the provisions of this ~~act~~ section shall govern.

18 SECTION 5. This act shall become effective November 1, 2022.
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