

# An Act

ENROLLED HOUSE  
BILL NO. 3383

By: Osburn of the House

and

Daniels of the Senate

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.

SUBJECT: Criminal procedure

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:

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

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

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

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

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

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

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

may institute a proceeding under ~~this act~~ the Post-Conviction Procedure Act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, ~~this act~~ the Post-Conviction Procedure Act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence including, but not limited to, writs of habeas corpus.

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

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

1. The date on which the judgment of conviction or revocation of suspended sentence became final by the conclusion of direct review by the Oklahoma Court of Criminal Appeals or the expiration

of the time for seeking such review by the Oklahoma Court of Criminal Appeals;

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

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

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

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

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

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

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

Section 1086. All grounds for relief available to an applicant under ~~this act~~ the Post-Conviction Procedure Act, including claims challenging the jurisdiction of the trial court, must be raised in his or her original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.

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

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

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

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

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

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

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

D. 1. The application for post-conviction relief shall be filed in the Court of Criminal Appeals within ninety (90) days from the date the appellee's brief on direct appeal is filed or, if a reply brief is filed, ninety (90) days from the filing of that reply

brief with the Court of Criminal Appeals on the direct appeal. Where the appellant's original brief on direct appeal has been filed prior to November 1, 1995, and no application for post-conviction relief has been filed, any application for post-conviction relief must be filed in the Court of Criminal Appeals within one hundred eighty (180) days of November 1, 1995. The Court of Criminal Appeals may issue orders establishing briefing schedules or enter any other orders necessary to extend the time limits under this section in cases where the original brief on direct appeal has been filed prior to November 1, 1995.

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

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

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

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

- (1) whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist,
- (2) whether the applicant's grounds were or could have been previously raised, and
- (3) whether relief may be granted under ~~this act~~ the Post-Conviction Procedure Act.

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

- (1) it is a claim of ineffective assistance of trial counsel involving a factual basis that was not ascertainable through the exercise of reasonable

diligence on or before the time of the direct appeal, or

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

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

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

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

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

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

6. The district attorney's office shall have twenty (20) days after the issues are remanded to the district court within which to file a response. The district court may grant one extension of

twenty (20) days for good cause shown and may issue any orders necessary to facilitate post-conviction review pursuant to the remand order of the Court of Criminal Appeals. Any applications for extension beyond the twenty (20) days shall be presented to the Court of Criminal Appeals. If the district court determines that an evidentiary hearing should be held, that hearing shall be held within thirty (30) days from the date that the state filed its response. The district court shall file its decision together with findings of fact and conclusions of law with the Court of Criminal Appeals within forty-five (45) days from the date that the state filed its response or within forty-five (45) days from the date of the conclusion of the evidentiary hearing.

7. Either party may seek review by the Court of Criminal Appeals of the district court's determination of the issues remanded by the Court of Criminal Appeals within ten (10) days from the entry of judgment. Such party shall file a notice of intent to seek review and a designation of record in the district court within ten (10) days from the entry of judgment. A copy of the notice of intent to seek review and the designation of the record shall be served on the court reporter, the petitioner, the district attorney, and the Attorney General, and shall be filed with the Court of Criminal Appeals. A petition in error shall be filed with the Court of Criminal Appeals by the party seeking review within thirty (30) days from the entry of judgment. If an evidentiary hearing was held, the court reporter shall prepare and file all transcripts necessary for the appeal within sixty (60) days from the date the notice and designation of record are filed. The petitioner's brief-in-chief shall be filed within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of the filing of the notice. The respondent shall have twenty (20) days thereafter to file a response brief. The district court clerk shall file the records on appeal with the Court of Criminal Appeals on or before the date the petitioner's brief-in-chief is due. The Court of Criminal Appeals shall issue an opinion in the case within one hundred twenty (120) days of the filing of the response brief or at the time the direct appeal is decided. If no review is sought within the time specified in this section, the Court of Criminal Appeals may adopt the findings of the district court and enter an order within fifteen (15) days of the time specified for seeking review or may order additional briefing by the parties. In no event shall the Court of Criminal Appeals grant post-conviction relief before giving the state an opportunity to respond to any and all claims raised to the Court.

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

- a. the application contains claims and issues that have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the legal basis for the claim was unavailable, or
- b.
  - (1) the application contains sufficient specific facts establishing that the current claims and issues have not and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the factual basis for the claim was unavailable as it was not ascertainable through the exercise of reasonable diligence on or before that date, and
  - (2) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the alleged error, no reasonable fact finder would have found the applicant guilty of the underlying offense or would have rendered the penalty of death.

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

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

- a. was not recognized by or could not have been reasonably formulated from a final decision of the



United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date, or

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

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

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

Passed the House of Representatives the 22nd day of March, 2022.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 27th day of April, 2022.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_