

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3383

By: Moore of the House

and

7 **Daniels** of the Senate

8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to criminal procedure; amending 22
12 O.S. 2021, Section 1080, which relates to the Post-
13 Conviction Procedure Act; requiring persons filing
14 writs of habeas corpus to utilize procedures provided
15 in the Post-Conviction Procedure Act; establishing
16 time limitation for filing original or subsequent
17 application for post-conviction relief; providing
18 guidelines for determining limitation periods; making
19 application and time limitation provisions applicable
20 to post-conviction applications filed on or after
21 certain effective date; amending 22 O.S. 2021,
22 Sections 1086 and 1089, which relate to the Post-
23 Conviction Procedure Act; requiring claims
24 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:

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

1 conviction was imposed to secure the appropriate relief. Excluding
2 a timely appeal, ~~this act~~ the Post-Conviction Procedure Act
3 encompasses and replaces all common law and statutory methods of
4 challenging a conviction or sentence including, but not limited to,
5 writs of habeas corpus.

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

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

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

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

21 3. The date on which any impediment to filing an application
22 created by a state actor in violation of the Constitution of the
23 United States or the Constitution of the State of Oklahoma, or laws
24

1 of the State of Oklahoma, is removed, if the petitioner was
2 prevented from filing by such action;

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

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

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

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

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

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

1 in the conviction or sentence or in any other proceeding the
2 applicant has taken to secure relief may not be the basis for a
3 subsequent application, unless the court finds a ground for relief
4 asserted which for sufficient reason was not asserted or was
5 inadequately raised in the prior application.

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

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

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

1 appeal record is to be transmitted to the Oklahoma Indigent Defense
2 System or the other attorney.

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

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

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

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

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

1 Appeals may issue orders establishing briefing schedules or enter
2 any other orders necessary to extend the time limits under this
3 section in cases where the original brief on direct appeal has been
4 filed prior to November 1, 1995.

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

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

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

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

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

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

23 (3) whether relief may be granted under ~~this act~~ the
24 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

1 conclusions of law not later than fifteen (15) days after the date
2 the parties filed proposed findings.

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

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

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

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

1 evidentiary hearing should be held, that hearing shall be held
2 within thirty (30) days from the date that the state filed its
3 response. The district court shall file its decision together with
4 findings of fact and conclusions of law with the Court of Criminal
5 Appeals within forty-five (45) days from the date that the state
6 filed its response or within forty-five (45) days from the date of
7 the conclusion of the evidentiary hearing.

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

1 evidentiary hearing was held, within forty-five (45) days from the
2 date of the filing of the notice. The respondent shall have twenty
3 (20) days thereafter to file a response brief. The district court
4 clerk shall file the records on appeal with the Court of Criminal
5 Appeals on or before the date the petitioner's brief-in-chief is
6 due. The Court of Criminal Appeals shall issue an opinion in the
7 case within one hundred twenty (120) days of the filing of the
8 response brief or at the time the direct appeal is decided. If no
9 review is sought within the time specified in this section, the
10 Court of Criminal Appeals may adopt the findings of the district
11 court and enter an order within fifteen (15) days of the time
12 specified for seeking review or may order additional briefing by the
13 parties. In no event shall the Court of Criminal Appeals grant
14 post-conviction relief before giving the state an opportunity to
15 respond to any and all claims raised to the Court.

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

- 22 a. the application contains claims and issues that have
23 not been and could not have been presented previously
24 in a timely original application or in a previously

1 considered application filed under this section,
2 because the legal basis for the claim was unavailable,
3 or

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

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

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

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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20 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS,
21 dated 03/03/2022 - DO PASS, As Amended and Coauthored.
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