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April 12, 2022

ENGROSSED HOUSE  
BILL NO. 3383

By: Moore 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.

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:

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

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

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

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

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

15       ~~(f) that~~ 6. That the conviction or sentence is otherwise  
16 subject to collateral attack upon any ground of alleged error  
17 heretofore available under any common law, statutory or other writ,  
18 motion, petition, proceeding or remedy~~+~~,  
19 may institute a proceeding under ~~this act~~ the Post-Conviction  
20 Procedure Act in the court in which the judgment and sentence on  
21 conviction was imposed to secure the appropriate relief. Excluding  
22 a timely appeal, ~~this act~~ the Post-Conviction Procedure Act  
23 encompasses and replaces all common law and statutory methods of  
24

1 challenging a conviction or sentence including, but not limited to,  
2 writs of habeas corpus.

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

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

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

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

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

23 4. The date on which the constitutional right asserted was  
24 initially recognized by the United States Supreme Court, if the

1 right has been newly recognized by the United States Supreme Court  
2 and made retroactively applicable to cases on collateral review; or

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

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

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

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

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

1 asserted which for sufficient reason was not asserted or was  
2 inadequately raised in the prior application.

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
20 April 12, 2022 - DO PASS  
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