

1 STATE OF OKLAHOMA

2 2nd Session of the 60th Legislature (2026)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 3996

By: Worthen and Caldwell (Trey)
of the House

and

Howard of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to crimes and punishments; amending
11 22 O.S. 2021, Section 1089, as amended by Section 4,
12 Chapter 144, O.S.L. 2022 (22 O.S. Supp. 2025, Section
13 1089), which relates to capital cases; requiring the
14 Oklahoma Indigent Defense System to make certain
15 payments and provide certain experts; and providing
16 an effective date.

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

18 SECTION 1. AMENDATORY 22 O.S. 2021, Section 1089, as
19 amended by Section 4, Chapter 144, O.S.L. 2022 (22 O.S. Supp. 2025,
20 Section 1089), is amended to read as follows:

21 Section 1089. A. The application for post-conviction relief of
22 a defendant who is under the sentence of death in one or more counts
23 and whose death sentence has been affirmed or is being reviewed by
24 the Court of Criminal Appeals in accordance with the provisions of
Section 701.13 of Title 21 of the Oklahoma Statutes shall be

1 expedited as provided in this section. The provisions of this
2 section also apply to noncapital sentences in a case in which the
3 defendant has received one or more sentences of death.

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

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

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

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

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

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

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

23 No application may be amended or supplemented after the time
24 specified under this section. Any amended or supplemental

1 application filed after the time specified under this section shall
2 be treated by the Court of Criminal Appeals as a subsequent
3 application.

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

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

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

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

14 (3) whether relief may be granted under the Post-
15 Conviction Procedure Act.

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

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

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

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

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

20 5. If the Court of Criminal Appeals determines that
21 controverted, previously unresolved factual issues material to the
22 legality of the applicant's confinement do exist, and that the
23 application meets the other requirements of paragraph 4 of this
24 subsection, the Court shall enter an order to the district court

1 that imposed the sentence designating the issues of fact to be
2 resolved and the method by which the issues shall be resolved.

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

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

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

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

1 response brief or at the time the direct appeal is decided. If no
2 review is sought within the time specified in this section, the
3 Court of Criminal Appeals may adopt the findings of the district
4 court and enter an order within fifteen (15) days of the time
5 specified for seeking review or may order additional briefing by the
6 parties. In no event shall the Court of Criminal Appeals grant
7 post-conviction relief before giving the state an opportunity to
8 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 Court of Criminal
12 Appeals may not consider the merits of or grant relief based on the
13 untimely original application, or a subsequent 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 was unavailable,
19 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 was unavailable as it was not ascertainable
3 through the exercise of reasonable diligence on
4 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 The provisions of this paragraph shall apply irrespective of the
13 nature of the claims raised in the application and shall include
14 jurisdictional claims. The provisions of this paragraph shall also
15 apply to any post-conviction application filed on or after ~~the~~
16 ~~effective date of this act~~ November 1, 1987.

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

- 20 a. was not recognized by or could not have been
21 reasonably formulated from a final decision of the
22 United States Supreme Court, a court of appeals of the
23 United States, or a court of appellate jurisdiction of
24 this state on or before that date, or

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

5 E. All matters not specifically governed by the provisions of
6 this section shall be subject to the provisions of the Post-
7 Conviction Procedure Act. If the provisions of this section
8 conflict with the provisions of the Post-Conviction Procedure Act,
9 the provisions of this section shall govern.

10 SECTION 2. This act shall become effective November 1, 2026.

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