

An Act

ENROLLED HOUSE
BILL NO. 1693

By: Worthen of the House

and

Rader of the Senate

An Act relating to criminal procedure; amending Section 1, Chapter 168, O.S.L. 2022 (22 O.S. Supp. 2024, Section 1005.1), which relates to death penalty procedures for the mentally incompetent; clarifying evidentiary hearing requirements; specifying time limitation for the submission of certain reports; directing wardens to proceed with execution under certain circumstances; allowing new execution dates to be set; modifying and establishing procedures for persons deemed mentally incompetent to be executed; applying provisions of the Criminal Discovery Code where relevant; prohibiting proceedings from being filed under seal; making amendatory provisions retroactive; and providing an effective date.

SUBJECT: Criminal procedure

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

SECTION 1. AMENDATORY Section 1, Chapter 168, O.S.L. 2022 (22 O.S. Supp. 2024, Section 1005.1), is amended to read as follows:

Section 1005.1. A. For purposes of this act, "mentally incompetent to be executed" means that because of a mental condition the person is presently unable to have a rational understanding:

1. Of the reason he or she is being executed; and
2. That he or she is to be executed and that execution is imminent.

B. There shall be a presumption that a person who has received a judgment of death is mentally competent to be executed.

C. If, after the Attorney General files a motion to set an execution date, the ~~person's~~ attorney for the person has good reason to believe that the person may be mentally incompetent to be executed, the attorney may file a motion in the Court of Criminal Appeals setting forth the facts giving rise to the belief that the person may be mentally incompetent to be executed and requesting the court to order that the person be examined for mental competency to be executed.

D. A motion alleging that a person is mentally incompetent to be executed shall be filed initially when filing a written response to the motion of the Attorney General to set an execution date. The person shall have seven (7) days from the filing of the motion of the Attorney General to file a response and raise the issue of mental incompetency.

E. A motion alleging that a person is mentally incompetent to be executed shall identify the proceeding in which the person was convicted and shall clearly set forth alleged facts in support of the assertion that the person is presently mentally incompetent to be executed. The person shall attach affidavits, records, or other evidence supporting such allegations or shall state a reason for which such items are not attached. The person shall identify any previous proceeding in which the person challenged his or her competency in relation to the conviction and judgment of death including any challenge to the ~~person's~~ competency of the person to be executed, competency to stand trial, or sanity at the time of the offense.

F. In the order of the Court of Criminal Appeals setting the execution date, the Court shall remand the issue of mental competency to be executed to the trial court where the person was originally tried and sentenced. Mental competency of a person to be executed shall not be considered unless and until an execution date has been scheduled.

G. In addition to the authority set forth in subsection C of Section 1001.1 of ~~Title 22 of the Oklahoma Statutes~~ this title, the Court of Criminal Appeals may issue stays of execution as necessary to permit inquiry into the ~~person's~~ mental competency of the person to be executed.

H. On receipt of the remand, the trial court shall hold an evidentiary hearing to determine whether the person has raised a substantial doubt as to the ~~person's~~ competency of the person to be executed. Unless the Court of Criminal Appeals issues a stay of execution, the hearing shall be held and a decision shall be rendered before the scheduled execution date of the person. The Attorney General shall represent the state at the evidentiary hearing. If the trial court determines the person has failed to make a substantial showing that he or she is mentally incompetent to be executed, the court shall deny the motion and the execution shall proceed. If the trial court determines the person has made a substantial showing that he or she is mentally incompetent to be executed, the trial court shall order an examination of the person by the Department of Mental Health and Substance Abuse Services or by a qualified forensic examiner designated by the Department of Mental Health and Substance Abuse Services. By filing the motion, the person shall be deemed to consent to submit to an examination as required by this section for the purpose of assessment of mental competency to be executed. In addition, the person waives any claim of privilege with respect to, and consents to the release of, all mental health and medical records relevant to whether the person is mentally incompetent to be executed. If the person refuses to be examined by the ~~state's~~ expert of the state, the trial court shall not consider any expert evidence offered by the person concerning his or her competency.

I. The qualified forensic examiner or examiners shall receive instructions to examine the person to determine whether the person has a rational understanding:

1. Of the reason he or she is being executed; and
2. That he or she is to be executed and that execution is imminent.

J. Within a time ordered by the trial court not to exceed forty-five (45) days, the qualified forensic examiner or examiners shall provide copies of their reports to the attorney representing the state, the attorney representing the person, and the trial court.

K. After all examinations are complete, the trial court shall conduct a hearing within thirty (30) days to determine whether the person is mentally competent to be executed. The person shall

overcome the presumption that he or she is competent to be executed by a preponderance of the evidence.

L. If the trial court finds that the person is competent to be executed, the warden shall proceed to execute the judgment as certified in the warrant. If the prior execution date has expired or the Court of Criminal Appeals has issued a stay, a new execution date shall be set as provided in subsection F of Section 1001.1 of this title.

M. If the trial court finds that the person is mentally incompetent to be executed, the following procedures shall be followed:

~~1. The trial court shall issue notice to the Court of Criminal Appeals of such findings at which time the Court of Criminal Appeals shall issue a stay of execution if one has not already been entered. Upon issuance of such stay, the trial court shall order that the inmate be reexamined after a reasonable period, not to exceed four (4) months, by a qualified forensic examiner or examiners as necessary to determine whether the person remains mentally incompetent to be executed. If the trial court finds that the person is competent to be executed, the warden shall proceed to execute the judgment as certified in the warrant.~~

~~M. If a person is found to be mentally incompetent to be executed,~~

2. The trial court shall also order the Department of Mental Health and Substance Abuse Services shall to determine through consultation with the Department of Corrections, the place for the person to be held for safe confinement until his or her competency is restored.

3. The trial court shall further order the Department of Mental Health and Substance Abuse Services to provide treatment, therapy, or training for the person to achieve competency. The Department of Mental Health and Substance Abuse Services may designate an entity with qualified personnel to provide competency restoration services on behalf of the Department. Competency restoration services shall begin within no more than thirty (30) days after the order issued by the trial court.

~~N. If a person is determined by~~

4. The Department of Mental Health and Substance Abuse Services, or a qualified forensic examiner ~~or examiners to have regained his or her~~ designated by the Department, shall reevaluate the mental competency, ~~the state shall file a motion to determine mental~~ of the person to be executed no more than four (4) months after competency ~~to be heard by the trial court where the person was originally tried~~ restoration services have commenced. A copy of the report following reevaluation shall be provided to the attorney representing the state, the attorney representing the person, and the trial court. If the qualified forensic examiner finds the person to be mentally competent to be executed, the trial court shall hold a hearing to determine whether the person is mentally competent to be executed within forty-five (45) days after receipt of the report. The state must overcome by competent evidence a rebuttable presumption of continued incompetence.

5. After such hearing, if the person is found to be mentally competent to be executed, the trial court shall notify the Court of Criminal Appeals which shall vacate the stay of execution. The warden shall proceed to execute the judgment as certified in the warrant. If the prior execution date has expired, a new execution date shall be set as provided in subsection F of Section 1001.1 of Title ~~22 of the Oklahoma Statutes~~ this title.

6. If the trial court determines that the person remains mentally incompetent to be executed, the trial court shall enter an order directing the Department of Mental Health and Substance Abuse Services to continue to provide treatment, therapy, or training for the person to achieve competency. The Department may designate an entity with qualified personnel to provide competency restoration services on behalf of the Department.

7. The entity providing competency restoration services shall monitor the progress of the person and immediately provide written notification to the attorney representing the state, the attorney representing the person, and the trial court if it appears the person facing execution may have regained mental competency to be executed. Upon receipt of such notice, the trial court shall order the Department of Mental Health and Substance Abuse Services, or a qualified forensic examiner designated by the Department, to immediately reevaluate the mental competency of the person to be executed and submit a report within thirty (30) days of the order. The trial court shall then schedule an evidentiary hearing, to be held within thirty (30) days, to determine whether the person is mentally competent to be executed. The state must overcome by

competent evidence a rebuttable presumption of continued incompetence.

8. After the hearing, if the person is found to be mentally competent to be executed, the trial court shall notify the Court of Criminal Appeals which shall vacate the stay of execution. The warden shall proceed to execute the judgment as certified in the warrant. If the prior execution date has expired, a new execution date shall be set as provided in subsection F of Section 1001.1 of this title.

9. If the person is found not mentally competent to be executed, restoration services shall continue as provided in paragraphs 3 and 4 of this subsection. The entity providing competency restoration services shall prepare periodic reports, every six (6) months, indicating what services are being provided and the response of the person, if any, to treatment. These reports shall be provided to the attorney representing the state, the attorney representing the person, and the trial court. The entity providing competency restoration services shall be under a continuing duty to comply with the provisions of paragraph 7 of this subsection.

N. The provisions of the Criminal Discovery Code, Section 2002 of this title, shall apply, as relevant, to evidentiary hearings conducted under the provisions of this section.

O. If any intervening change in the mental competency of the person to be executed occurs after the seven (7) day deadline to initiate proceedings required pursuant to subsection D of this section, the person may file a motion alleging he or she is mentally incompetent to be executed with the Court of Criminal Appeals. An intervening change shall be a condition that has not and could not have been presented in a timely motion because the factual basis for the claim was not ascertainable through the exercise of reasonable diligence. If the Court of Criminal Appeals determines that an intervening change has occurred, the procedures set forth in this section shall apply.

P. Any filing made pursuant to this section shall be made in good faith as provided in Rule 9.7(C), Rules of the Court of Criminal Appeals, of this title, Ch. 18, App.

Q. No portion of the record in proceedings under the provisions of this section shall be filed under seal.

R. Upon the effective date of this act, any amendments made to the provisions of this section shall be applied retroactively.

SECTION 2. This act shall become effective November 1, 2025.

Passed the House of Representatives the 12th day of March, 2025.

Presiding Officer of the House
of Representatives

Passed the Senate the 1st day of May, 2025.

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: _____