

STATE OF OKLAHOMA

2nd Session of the 60th Legislature (2026)

POLICY COMMITTEE  
RECOMMENDATION

FOR

HOUSE BILL NO. 3996

By: Caldwell (Trey)

POLICY COMMITTEE RECOMMENDATION

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

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 1089, as amended by Section 4, Chapter 144, O.S.L. 2022 (22 O.S. Supp. 2025, 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

1 section also apply to noncapital sentences in a case in which the  
2 defendant has received one or more sentences of death.

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

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

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

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

23 The applicant shall state in the application specific facts  
24 explaining as to each claim why it was not or could not have been

1 raised in a direct appeal and how it supports a conclusion that the  
2 outcome of the trial would have been different but for the errors or  
3 that the defendant is factually innocent.

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

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

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

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

1 be treated by the Court of Criminal Appeals as a subsequent  
2 application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22       7. Either party may seek review by the Court of Criminal  
23 Appeals of the district court's determination of the issues remanded  
24 by the Court of Criminal Appeals within ten (10) days from the entry

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

1 court and enter an order within fifteen (15) days of the time  
2 specified for seeking review or may order additional briefing by the  
3 parties. In no event shall the Court of Criminal Appeals grant  
4 post-conviction relief before giving the state an opportunity to  
5 respond to any and all claims raised to the Court.

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

11 a. the application contains claims and issues that have  
12 not been and could not have been presented previously  
13 in a timely original application or in a previously  
14 considered application filed under this section,  
15 because the legal basis for the claim was unavailable,  
16 or

17 b. (1) the application contains sufficient specific  
18 facts establishing that the current claims and  
19 issues have not and could not have been presented  
20 previously in a timely original application or in  
21 a previously considered application filed under  
22 this section, because the factual basis for the  
23 claim was unavailable as it was not ascertainable  
24



1 through the exercise of reasonable diligence on  
2 or before that date, and

3 (2) the facts underlying the claim, if proven and  
4 viewed in light of the evidence as a whole, would  
5 be sufficient to establish by clear and  
6 convincing evidence that, but for the alleged  
7 error, no reasonable fact finder would have found  
8 the applicant guilty of the underlying offense or  
9 would have rendered the penalty of death.

10 The provisions of this paragraph shall apply irrespective of the  
11 nature of the claims raised in the application and shall include  
12 jurisdictional claims. The provisions of this paragraph shall also  
13 apply to any post-conviction application filed on or after ~~the~~  
14 ~~effective date of this act~~ November 1, 1987.

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

- 18 a. was not recognized by or could not have been  
19 reasonably formulated from a final decision of the  
20 United States Supreme Court, a court of appeals of the  
21 United States, or a court of appellate jurisdiction of  
22 this state on or before that date, or  
23 b. is a new rule of constitutional law that was given  
24 retroactive effect by the United States Supreme Court

1                   or a court of appellate jurisdiction of this state and  
2                   had not been announced on or before that date.

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

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

9  
10          60-2-16507          GRS          02/18/26