

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                   STATE OF OKLAHOMA

3                   1st Session of the 60th Legislature (2025)

4                   HOUSE BILL 1693

By: Worthen of the House

5                   and

6                   **Rader** of the Senate

7

8

9                   AS INTRODUCED

10                  An Act relating to criminal procedure; amending  
11                  Section 1, Chapter 168, O.S.L. 2022 (22 O.S. Supp.  
12                  2024, Section 1005.1), which relates to death penalty  
13                  procedures for the mentally incompetent; clarifying  
14                  evidentiary hearing requirements; specifying time  
15                  limitation for the submission of certain reports;  
16                  directing wardens to proceed with execution under  
17                  certain circumstances; allowing new execution dates  
18                  to be set; modifying and establishing procedures for  
19                  persons deemed mentally incompetent to be executed;  
20                  applying provisions of the Criminal Discovery Code  
21                  where relevant; prohibiting proceedings from being  
22                  filed under seal; making amendatory provisions  
23                  retroactive; and providing an effective date.

24                  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:

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

4           1. Of the reason he or she is being executed; and

5           2. That he or she is to be executed and that execution is  
6 imminent.

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

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

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

23       E. A motion alleging that a person is mentally incompetent to  
24 be executed shall identify the proceeding in which the person was

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

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

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

22        H. On receipt of the remand, the trial court shall hold an  
23     evidentiary hearing to determine whether the person has raised a  
24     substantial doubt as to the ~~person's~~ competency of the person to be

1   executed. Unless the Court of Criminal Appeals issues a stay of  
2   execution, the hearing shall be held and a decision shall be  
3   rendered before the scheduled execution date of the person. The  
4   Attorney General shall represent the state at the evidentiary  
5   hearing. If the trial court determines the person has failed to  
6   make a substantial showing that he or she is mentally incompetent to  
7   be executed, the court shall deny the motion and the execution shall  
8   proceed. If the trial court determines the person has made a  
9   substantial showing that he or she is mentally incompetent to be  
10   executed, the trial court shall order an examination of the person  
11   by the Department of Mental Health and Substance Abuse Services or  
12   by a qualified forensic examiner designated by the Department of  
13   Mental Health and Substance Abuse Services. By filing the motion,  
14   the person shall be deemed to consent to submit to an examination as  
15   required by this section for the purpose of assessment of mental  
16   competency to be executed. In addition, the person waives any claim  
17   of privilege with respect to, and consents to the release of, all  
18   mental health and medical records relevant to whether the person is  
19   mentally incompetent to be executed. If the person refuses to be  
20   examined by the state's expert of the state, the trial court shall  
21   not consider any expert evidence offered by the person concerning  
22   his or her competency.

23

24

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

4           1. Of the reason he or she is being executed; and

5           2. That he or she is to be executed and that execution is  
6 imminent.

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

12      K. After all examinations are complete, the trial court shall  
13 conduct a hearing within thirty (30) days to determine whether the  
14 person is mentally competent to be executed. The person shall  
15 overcome the presumption that he or she is competent to be executed  
16 by a preponderance of the evidence.

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

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

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

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

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

21       3. The trial court shall further order the Department of Mental  
22 Health and Substance Abuse Services to provide treatment, therapy,  
23 or training for the person to achieve competency. The Department of  
24 Mental Health and Substance Abuse Services may designate an entity

1 with qualified personnel to provide competency restoration services  
2 on behalf of the Department. Competency restoration services shall  
3 begin within no more than thirty (30) days after the order issued by  
4 the trial court.

5 N. If a person is determined by

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

21 5. After such hearing, if the person is found to be mentally  
22 competent to be executed, the trial court shall notify the Court of  
23 Criminal Appeals which shall vacate the stay of execution. The  
24 warden shall proceed to execute the judgment as certified in the

1    warrant. If the prior execution date has expired, a new execution  
2    date shall be set as provided in subsection F of Section 1001.1 of  
3    ~~Title 22 of the Oklahoma Statutes~~ this title.

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

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

1      competent evidence a rebuttable presumption of continued  
2      incompetence.

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

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

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

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

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

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

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

19      SECTION 2. This act shall become effective November 1, 2025.  
20

21      COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY  
OVERSIGHT, dated 03/04/2025 - DO PASS, As Coauthored.  
22