

HB3638 FULLPCS1 Kevin McDugle-GRS
2/9/2024 12:07:53 pm

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3638 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kevin McDugle

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3638

By: McDugle

7
8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to murder; amending 21 O.S. 2021,
10 Sections 701.9 and 701.10, which relate to penalties
11 for murder; providing alternative punishment
12 provision where there is no finding of fact;
13 providing an exception; providing statutory
14 reference; authorizing the filing of applications for
15 postconviction relief under certain circumstances;
16 directing the Court of Criminal Appeals to make
17 certain determination; requiring the Court of
18 Criminal Appeals to enter certain order; amending 22
19 O.S. 2021, Section 1089, as amended by Section 4,
20 Chapter 144, O.S.L. 2022 (22 O.S. Supp. 2023, Section
21 1089), which relates to the Post-Conviction Procedure
22 Act; modifying list of issues that may be raised in
23 post-conviction relief applications; requiring the
24 review of applications to determine whether a change
in sentencing may be granted; providing for
codification; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 701.9, is
amended to read as follows:

1 Section 701.9 A. A person who is convicted of or pleads guilty
2 or nolo contendere to murder in the first degree shall be punished
3 by death, by imprisonment for life without parole or by imprisonment
4 for life. A person who is convicted of or pleads guilty or nolo
5 contendere to murder in the first degree, as described in subsection
6 E of Section 701.7 of this title, shall be punished by death or by
7 life without parole and absent an overwhelming amount of mitigating
8 evidence shall not be entitled to or afforded the benefit of
9 receiving imprisonment for life or deferment of the sentence.

10 B. A person convicted of or who pleads guilty or nolo
11 contendere to murder in the first degree without a finding of fact
12 that the person physically caused by his or her own actions the
13 death of another human being shall be punished by imprisonment for
14 life without parole, imprisonment for life, or imprisonment in the
15 custody of the Department of Corrections for not less than ten (10)
16 years; provided that the person shall not be punished by
17 imprisonment for life without parole if, prior to sentencing,
18 another person caused by his or her own actions the death of the
19 human being who is the victim of the murder in question and was not
20 sentenced to death or imprisonment for life without parole.

21 C. A person who is convicted of or pleads guilty or nolo
22 contendere to murder in the second degree shall be guilty of a
23 felony punishable by imprisonment in the custody of the Department
24 of Corrections for not less than ten (10) years nor more than life.

1 SECTION 2. AMENDATORY 21 O.S. 2021, Section 701.10, is
2 amended to read as follows:
3 Section 701.10 A. Upon conviction or adjudication of guilt of
4 a defendant of murder in the first degree, wherein the state,
5 pursuant to subsection A of Section 701.9 of this title, is seeking
6 the death penalty, the court shall conduct a separate sentencing
7 proceeding to determine whether the defendant should be sentenced to
8 death, life imprisonment without parole, or life imprisonment. The
9 proceeding shall be conducted by the trial judge before the same
10 trial jury as soon as practicable without presentence investigation.
11 B. If the trial jury has been waived by the defendant and the
12 state, or if the defendant pleaded guilty or nolo contendere, the
13 sentencing proceeding shall be conducted before the court.
14 C. In the sentencing proceeding, evidence may be presented as
15 to any mitigating circumstances or as to any of the aggravating
16 circumstances enumerated in Section 701.7 et seq. of this title.
17 Only such evidence in aggravation as the state has made known to the
18 defendant prior to his trial shall be admissible. In addition, the
19 state may introduce evidence about the victim and about the impact
20 of the murder on the family of the victim.
21 D. This section shall not be construed to authorize the
22 introduction of any evidence secured in violation of the
23 Constitutions of the United States or of the State of Oklahoma. The
24

1 state and the defendant or his counsel shall be permitted to present
2 argument for or against sentence of death.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1088.2 of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 After the effective date of this act, regardless of the date of
7 the underlying crime or conviction, a convicted person under a
8 sentence of death, including those whose convictions and sentences
9 are final and who have exhausted the state and federal collateral
10 review process, may file a subsequent application for postconviction
11 relief pursuant to the procedures of Section 1089 of this title.

12 Upon such application, the Court of Criminal Appeals shall determine
13 whether the record establishes sufficient grounds to resentence the
14 person in accordance with this section. Should the record not
15 provide a sufficient basis to determine whether the person convicted
16 is eligible for death under Sections 701.9 and 701.10 of Title 21 of
17 the Oklahoma Statutes, as amended, the Court of Criminal Appeals
18 shall enter an order to the district court that imposed the sentence
19 designating the issues of fact to be resolved and the method by
20 which the issues shall be resolved.

21 SECTION 4. AMENDATORY 22 O.S. 2021, Section 1089, as
22 amended by Section 4, Chapter 144, O.S.L. 2022 (22 O.S. Supp. 2023,
23 Section 1089), is amended to read as follows:
24

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

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

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

22 1. Were not and could not have been raised in a direct appeal,
23 and
24

1 ~~2. Support~~ support a conclusion either that the outcome of the
2 trial would have been different but for the errors or that the
3 defendant is factually innocent; or

4 2. A change in the relevant law, such as the enactment of
5 Section 3 of this act.

6 The applicant shall state in the application specific facts
7 explaining as to each claim why it was not or could not have been
8 raised in a direct appeal and how it supports a conclusion that the
9 outcome of the trial or sentencing would have been different but for
10 the errors or a change in the law, or that the defendant is
11 factually innocent.

12 D. 1. The application for post-conviction relief shall be
13 filed in the Court of Criminal Appeals within ninety (90) days from
14 the date the appellee's brief on direct appeal is filed or, if a
15 reply brief is filed, ninety (90) days from the filing of that reply
16 brief with the Court of Criminal Appeals on the direct appeal.
17 Where the appellant's original brief on direct appeal has been filed
18 prior to November 1, 1995, and no application for post-conviction
19 relief has been filed, any application for post-conviction relief
20 must be filed in the Court of Criminal Appeals within one hundred
21 eighty (180) days of November 1, 1995. The Court of Criminal
22 Appeals may issue orders establishing briefing schedules or enter
23 any other orders necessary to extend the time limits under this
24

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 the Post-
22 Conviction Procedure Act; and

23 (4) whether a change in sentencing may be granted
24 under the provisions of Section 3 of this act.

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

3 (1) it is a claim of ineffective assistance of trial
4 counsel involving a factual basis that was not
5 ascertainable through the exercise of reasonable
6 diligence on or before the time of the direct
7 appeal, or

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

11 All claims of ineffective assistance of counsel shall be governed by
12 clearly established law as determined by the United States Supreme
13 Court.

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

1 later than fifteen (15) days after the date the parties filed
2 proposed findings.

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

10 The district court shall not permit any amendments or
11 supplements to the issues remanded by the Court of Criminal Appeals
12 except upon motion to and order of the Court of Criminal Appeals
13 subject to the limitations of this section.

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

16 6. The district attorney's office shall have twenty (20) days
17 after the issues are remanded to the district court within which to
18 file a response. The district court may grant one extension of
19 twenty (20) days for good cause shown and may issue any orders
20 necessary to facilitate post-conviction review pursuant to the
21 remand order of the Court of Criminal Appeals. Any applications for
22 extension beyond the twenty (20) days shall be presented to the
23 Court of Criminal Appeals. If the district court determines that an
24 evidentiary hearing should be held, that hearing shall be held

1 within thirty (30) days from the date that the state filed its
2 response. The district court shall file its decision together with
3 findings of fact and conclusions of law with the Court of Criminal
4 Appeals within forty-five (45) days from the date that the state
5 filed its response or within forty-five (45) days from the date of
6 the conclusion of the evidentiary hearing.

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

1 date of the filing of the notice. The respondent shall have twenty
2 (20) days thereafter to file a response brief. The district court
3 clerk shall file the records on appeal with the Court of Criminal
4 Appeals on or before the date the petitioner's brief-in-chief is
5 due. The Court of Criminal Appeals shall issue an opinion in the
6 case within one hundred twenty (120) days of the filing of the
7 response brief or at the time the direct appeal is decided. If no
8 review is sought within the time specified in this section, the
9 Court of Criminal Appeals may adopt the findings of the district
10 court and enter an order within fifteen (15) days of the time
11 specified for seeking review or may order additional briefing by the
12 parties. In no event shall the Court of Criminal Appeals grant
13 post-conviction relief before giving the state an opportunity to
14 respond to any and all claims raised to the Court.

15 8. If an original application for post-conviction relief is
16 untimely or if a subsequent application for post-conviction relief
17 is filed after filing an original application, the Court of Criminal
18 Appeals may not consider the merits of or grant relief based on the
19 untimely original application, or a subsequent 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 the Post-Conviction Procedure Act, a legal
2 basis of a claim is unavailable on or before a date described by
3 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 section
16 conflict with the provisions of the Post-Conviction Procedure Act,
17 the provisions of this section shall govern.

18 SECTION 5. This act shall become effective November 1, 2024.

Commented [1]: EDERIV

19 |
20 59-2-9948 GRS 02/08/24
21
22
23
24