

ENROLLED HOUSE
BILL NO. 2266

By: Christian, Sullivan,
Terrill, Wright (John) and
Duncan of the House

and

Sykes and Reynolds of the
Senate

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 1014 and 1015, as last amended by Section 3, Chapter 275, O.S.L. 2009 (22 O.S. Supp. 2009, Section 1015), which relate to the manner and procedures for inflicting death punishment; clarifying procedure for death punishment; allowing certain persons to witness executions; making identity of persons who participate or administer executions confidential; amending 22 O.S. 2001, Section 1355.6, which relates to the Indigent Defense Act; modifying scope of responsibilities of the Indigent Defense System; authorizing court to appoint legal representation for persons not in custody; amending 22 O.S. 2001, Section 2002, as amended by Section 23, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2009, Section 2002), which relates to the Oklahoma Criminal Discovery Code; providing exception to certain disclosure requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1014, is amended to read as follows:

Section 1014. A. The punishment of death ~~must~~ shall be ~~inflicted~~ carried out by ~~continuous, intravenous~~ the administration

of a lethal quantity of ~~an ultrashort-acting barbiturate in combination with a chemical paralytic agent~~ drug or drugs until death is pronounced by a licensed physician according to accepted standards of medical practice.

B. If the execution of the sentence of death as provided in subsection A of this section is held unconstitutional by an appellate court of competent jurisdiction, then the sentence of death shall be carried out by electrocution.

C. If the execution of the sentence of death as provided in subsections A and B of this section is held unconstitutional by an appellate court of competent jurisdiction, then the sentence of death shall be carried out by firing squad.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 1015, as last amended by Section 3, Chapter 275, O.S.L. 2009 (22 O.S. Supp. 2009, Section 1015), is amended to read as follows:

Section 1015. A. A judgment of death must be executed at the Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered.

B. The judgment of execution shall take place under the authority of the Director of the ~~Oklahoma~~ Department of Corrections and the warden must be present along with other necessary prison and corrections officials to carry out the execution. The warden must invite the presence of a physician and the district attorney of the county in which the crime occurred or his or her designee, the judge who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and lead law enforcement officials of any state, county or local law enforcement agency who investigated the crime or testified in any court or clemency proceeding related to the crime, including but not limited to the sheriff of the county wherein the conviction was had, to witness the execution; in addition, the Cabinet Secretary of Safety and Security must be invited ~~and~~ as well as any other personnel or correctional personnel deemed appropriate and approved by the Director. The warden shall, at the request of the defendant, permit the presence of such ministers of the ~~defendant's~~ choice of the defendant, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name; provided, reporters from recognized members of the news media will be admitted upon proper identification, application and approval of the warden. The identity of all persons who participate

in or administer the execution process shall be confidential and shall not be subject to discovery in any civil or criminal proceeding.

C. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state or pursuant to federal authority, or any combination thereof, and this state has priority to execute the defendant, the warden must invite the prosecuting attorney or his or her designee, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has issued. The above-mentioned officials shall be allowed to witness the execution or view the execution by closed circuit television as determined by the Director of the Department of Corrections.

D. A place shall be provided at the Oklahoma State Penitentiary at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area to which other nonfamily member witnesses are admitted, provided, however, if there are multiple deceased victims, the Department shall not be required to provide separate areas for each family of each deceased victim. If facilities are not capable or sufficient to provide all immediate family members with a direct view of the execution, the Department of Corrections may broadcast the execution by means of a closed circuit television system to an area in which other immediate family members may be located.

Immediate family members may request individuals not directly related to the deceased victim but who serve a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister or licensed counselor. The warden in consultation with the Director shall approve or disapprove such requests. Provided further, the Department may set a limit on the number of witnesses or viewers within occupancy limits.

As used in this section, "members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member specified in this subsection.

E. Any surviving victim of the defendant who is eighteen (18) years of age or older may view the execution by closed circuit television with the approval of both the Director of the Department of Corrections and the warden. The Director and warden shall prioritize persons to view the execution, including immediate family members, surviving victims, and supporting persons, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of their perpetrator may have an accompanying support person as provided for members of the immediate family of a deceased victim. As used in this subsection, "surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 1355.6, is amended to read as follows:

Section 1355.6. A. The Indigent Defense System shall have the responsibility of defending all indigents who are in custody, as determined in accordance with the provisions of the Indigent Defense Act in all capital and felony cases and in all misdemeanor and traffic cases punishable by incarceration. A court may appoint legal representation for an indigent who is not in custody, in which case costs for such representation shall be paid from the local court fund. In addition, the System shall have the responsibility of defending all indigent juveniles, as determined in accordance with the provisions of the Indigent Defense Act, in juvenile delinquency proceedings, adult certification proceedings, reverse certification proceedings, youthful offender proceedings, and any other cases pursuant to the Oklahoma Juvenile Code, other than mental health cases, in-need-of-supervision proceedings, and any other juvenile proceedings that are civil in nature.

B. Upon prior approval by the Executive Director, the System may also represent indigents in other state proceedings, if such representation is related to the case for which the original appointment of the System was made and if not otherwise prohibited by the Indigent Defense Act.

C. The Executive Director may select attorneys to handle indigent criminal cases from a list of attorneys who have agreed to accept assignments of such cases, who provide proof of professional liability insurance coverage, and who meet the qualifications

established by the System for such assignments. Payment to such attorneys shall be made from the budget of the System.

D. The Board shall have the authority to provide for representation for indigent criminal defendants and others for whom representation is required by either the Constitution or laws of this state by attorneys employed by the System.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 2002, as amended by Section 23, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2009, Section 2002), is amended to read as follows:

Section 2002. A. Disclosure of Evidence by the State.

1. Upon request of the defense, the state shall be required to disclose the following:

- a. the names and addresses of witnesses which the state intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,
- b. law enforcement reports made in connection with the particular case,
- c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant,
- d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,
- e. any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused,
- f. any record of prior criminal convictions of the defendant, or of any codefendant, and
- g. Oklahoma State Bureau of Investigation (OSBI) rap sheet/records check on any witness listed by the state or the defense as a witness who will testify at trial,

as well as any convictions of any witness revealed through additional record checks if the defense has furnished social security numbers or date of birth for their witnesses, except OSBI rap sheet/record checks shall not provide date of birth, social security number, home phone number or address. The state shall not be required to provide an OSBI rap sheet, home address, home telephone number, date of birth or social security number of any witness that is currently certified as a law enforcement officer by the Council on Law Enforcement Education and Training.

2. The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment.

3. The prosecuting attorney's obligations under this standard extend to:

- a. material and information in the possession or control of members of the prosecutor's staff,
- b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and
- c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

B. Disclosure of Evidence by the Defendant.

1. Upon request of the state, the defense shall be required to disclose the following:

- a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,
- b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place

specified in the information or indictment, together with the witness' statement to that fact,

- c. the names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

3. Upon the prosecuting attorney's request after the time set by the court, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

- a. the defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant, or
- b. is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is redacted by the court to preclude disclosure of privileged communication.

C. Continuing Duty to Disclose.

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under the Oklahoma Criminal Discovery Code, such party shall promptly notify the other party,

the attorney of the other party, or the court of the existence of the additional evidence or material.

D. Time of Discovery.

Motions for discovery may be made at the time of the district court arraignment or thereafter; provided that requests for police reports may be made subject to the provisions of Section 258 of this title. However, a request pursuant to Section 258 of this title shall be subject to the discretion of the district attorney. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

E. Regulation of Discovery.

1. Protective and Modifying Orders. Upon motion of the state or defendant, the court may at any time order that specified disclosures be restricted, or make any other protective order. If the court enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

2. Failure to Comply with a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

F. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however, any item which was obtained from the defendant by the state of which copies are requested by the defendant shall be paid by the state. Provided, if the court determines the defendant is indigent and

without funds to pay the cost of reproduction of the required items, the cost shall be paid by the Indigent Defender System, unless otherwise provided by law.

SECTION 5. This act shall become effective November 1, 2010.

Passed the House of Representatives the 28th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 28th day of May, 2010.

Presiding Officer of the Senate