

**77-19-8 Judgment of death, when suspended, and by whom.**

(1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the governor or the Board of Pardons and Parole, may not stay or suspend the execution of a judgment of death.

- (2)
- (a) A court of competent jurisdiction shall issue a temporary stay of judgment of death when:
    - (i) the judgment is appealed;
    - (ii) the judgment is automatically reviewed;
    - (iii) the person sentenced to death files a first petition for postconviction relief after the direct appeal under Title 78B, Chapter 9, Postconviction Remedies Act;
    - (iv) the person sentenced to death requests counsel under Subsection 78B-9-202(2)(a) to represent the person in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act; or
    - (v) counsel enters an appearance to represent the person sentenced to death in a first action for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act.
  - (b) A court may not issue a temporary stay of judgment of death when the person sentenced to death files a petition for postconviction relief under Title 78B, Chapter 9, Postconviction Remedies Act, after a first petition has been denied or dismissed, unless the court first finds all of the following:
    - (i) the claims would not be barred under Section 78B-9-106;
    - (ii) the claims are potentially meritorious; and
    - (iii) the petition may not be reasonably disposed of before the execution date.
  - (c)
    - (i) The executive director of the Department of Corrections or a designee under Section 77-19-202 may temporarily suspend the execution if the person sentenced to death appears to be incompetent or pregnant.
    - (ii) A temporary suspension under Subsection (2)(c)(i) shall end if the person is determined to be:
      - (A) competent;
      - (B) not pregnant; or
      - (C) no longer incompetent or pregnant.
- (3)
- (a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the appeal, automatic review, or action under Title 78B, Chapter 9, Postconviction Remedies Act is concluded.
  - (b) A request for counsel under Section 78B-9-202 does not constitute an application for postconviction or other collateral review and does not toll the statute of limitations under Section 78B-9-107.

Amended by Chapter 165, 2011 General Session