

STAY OF EXECUTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill amends the Code of Criminal Procedure by providing for a temporary stay of execution if the petitioner files for postconviction relief, representation of counsel, or if counsel enters an appearance to represent the petitioner under the Post-Conviction Remedies Act. Clarifies when temporary suspensions of execution end.

Highlighted Provisions:

This bill:

- ▶ provides for a temporary stay of execution when, under the Post-Conviction Remedies Act:
 - a petitioner files for postconviction relief;
 - a petitioner files for representation of counsel; or
 - counsel enters an appearance to represent the person sentenced to death;
- ▶ provides for a temporary stay of execution when the person sentenced to death appears to be incompetent or pregnant;
- ▶ clarifies that a stay issued pursuant to the Post-Conviction Remedies Act ends when the appeal, automatic review, or action is concluded;
- ▶ clarifies that a request for counsel by an indigent defendant does not toll the statute of limitations for postconviction relief; and
- ▶ clarifies that stays of execution do not toll the statute of limitations for postconviction relief.

Monies Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **77-19-8**, as last amended by Chapter 13, Laws of Utah 1994

34 **78-35a-107**, as renumbered and amended by Chapter 235, Laws of Utah 1996

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **77-19-8** is amended to read:

38 **77-19-8. Judgment of death, when suspended, and by whom.**

39 ~~[(A)]~~ (1) Except as stated in Subsection (2), a judge, tribunal, or officer, other than the
40 governor or the Board of Pardons and Parole, may not stay or suspend the execution of a
41 judgment of death~~[-except:]~~.

42 ~~[(+)]~~ (2) (a) A court of competent jurisdiction shall issue a temporary stay of judgment
43 of death ~~[may issue by a court of competent jurisdiction]~~ when:

44 (i) the judgment is appealed~~[-];~~

45 (ii) the judgment is automatically reviewed~~[-or subjected to collateral attack in a post~~
46 ~~conviction proceeding]; [or]~~

47 (iii) the person sentenced to death files a petition for postconviction relief under Title
48 78, Chapter 35a, Post-Conviction Remedies Act;

49 (iv) the person sentenced to death requests counsel under Subsection 78-35a-202(2)(a)
50 to represent him in an action under Title 78, Chapter 35a, Post-Conviction Remedies Act; or

51 (v) counsel enters an appearance to represent the person sentenced to death in an action
52 under Title 78, Chapter 35a, Post-Conviction Remedies Act.

53 ~~[(2)]~~ (b) (i) ~~[in cases of suspected incompetency or pregnancy of the defendant,~~
54 ~~execution may be temporarily suspended by the]~~ The executive director of the Department of
55 Corrections or [his] a designee under Section 77-19-13 may temporarily suspend the execution
56 if the person sentenced to death appears to be incompetent or pregnant.

57 (ii) A temporary suspension under Subsection (2)(b)(i) shall end if the person is
58 determined to be:

59 (A) competent;

60 (B) not pregnant; or

61 (C) no longer incompetent or pregnant.

62 (3) (a) The court must vacate a stay issued pursuant to Subsection (2)(a) when the
63 appeal, automatic review, or action under Title 78, Chapter 35a, Post-Conviction Remedies Act
64 is concluded.

65 (b) A request for counsel under Section 78-35a-202 does not constitute an application
66 for postconviction or other collateral review and does not toll the statute of limitations under
67 Section 78-35a-107.

68 Section 2. Section **78-35a-107** is amended to read:

69 **78-35a-107. Statute of limitations for postconviction relief.**

70 (1) A petitioner is entitled to relief only if the petition is filed within one year after the
71 cause of action has accrued.

72 (2) For purposes of this section, the cause of action accrues on the latest of the
73 following dates:

74 (a) the last day for filing an appeal from the entry of the final judgment of conviction, if
75 no appeal is taken;

76 (b) the entry of the decision of the appellate court which has jurisdiction over the case,
77 if an appeal is taken;

78 (c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or
79 the United States Supreme Court, if no petition for writ of certiorari is filed;

80 (d) the entry of the denial of the petition for writ of certiorari or the entry of the
81 decision on the petition for certiorari review, if a petition for writ of certiorari is filed; or

82 (e) the date on which petitioner knew or should have known, in the exercise of
83 reasonable diligence, of evidentiary facts on which the petition is based.

84 (3) If the court finds that the interests of justice require, a court may excuse a
85 petitioner's failure to file within the time limitations.

86 (4) Sections 77-19-8, 78-12-35 and 78-12-40 do not extend the limitations period
87 established in this section.

Legislative Review Note

as of 1-28-04 10:44 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

It is estimated that provisions of this bill can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst