

BILL ANALYSIS

C.S.H.B. 2110
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have raised concerns regarding the scheduling of an execution date and the issuance of a warrant of execution. Prosecutors in many jurisdictions advise defense counsel of the intent to seek a warrant of execution. However, it is not unknown for some prosecutors to seek these warrants of execution without notifying counsel that an execution date is being sought or that one has been set. C.S.H.B. 2110 seeks to ensure transparency with these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2110 amends the Code of Criminal Procedure to prohibit a convicting court from setting an execution date unless the attorney representing the state files a written motion to set an execution date and, not later than the 10th day before the date on which the court enters an order setting the execution date, a copy of the motion is served on the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding and on the office of capital writs. The bill requires the clerk of the court in which a sentence of death is pronounced, at the time a warrant of execution is issued, to send a copy of the warrant to the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding, the attorney representing the state, and the office of capital writs.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2110 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 43.141, Code of Criminal Procedure, is amended by adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b-1) The attorney representing the state must ensure that a copy of the state's motion to set an execution date is served on the condemned person's attorney.

(b-2) If the convicting court intends to set an execution date under this article on its own motion, the clerk of the convicting court must provide written notice of that intent to:

(1) the condemned person's attorney and the attorney representing the state; and

(2) if the person is not a citizen of the United States, the nearest consular official of the country of which the person is a citizen.

(b-3) A copy served or notice provided under Subsection (b-1) or (b-2) must be:

(1) personally delivered not later than the 10th day before the day on which the court enters an order setting the execution date; or

(2) sent by first class mail and deposited in the mail not later than the 16th day before the day on which the court enters an order setting the execution date.

SECTION 2. Article 43.15, Code of Criminal Procedure, is amended to read as follows:

Art. 43.15. WARRANT OF EXECUTION.

(a) Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced[;] shall, not later than the 10th day [within ten days] after the court enters its order setting the date for execution, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, and the time fixed for the [his] execution, and which shall be directed to the director of the correctional institutions division of the Texas Department of Criminal Justice [Director of the Department of Corrections] at Huntsville, Texas, commanding the director [him] to proceed, at the time and place named in the order of execution, to carry the same into execution, as provided in [the preceding] Article 43.14, and shall deliver such warrant to the sheriff of the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 43.141, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) A convicting court may not set an execution date unless:

(1) the attorney representing the state files a written motion to set an execution date; and

(2) not later than the 10th day before the date on which the court enters an order setting the execution date, a copy of the motion is served on:

(A) the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding; and

(B) the office of capital writs established under Subchapter B, Chapter 78, Government Code.

SECTION 2. Article 43.15, Code of Criminal Procedure, is amended to read as follows:

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(a) Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced[;] shall, not later than the 10th day [within ten days] after the court enters its order setting the date for execution, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, and the time fixed for the [his] execution, and which shall be directed to the director of the correctional institutions division of the Texas Department of Criminal Justice [Director of the Department of Corrections] at Huntsville, Texas, commanding the director [him] to proceed, at the time and place named in the order of execution, to carry the same into execution, as provided in [the preceding] Article 43.14, and shall deliver such warrant to the sheriff of the

county in which such judgment of conviction was had, to be ~~[by him]~~ delivered by the sheriff to the director ~~[said Director of the Department of Corrections]~~, together with the condemned person if the person [he] has not previously been so delivered.

(b) At the time the warrant is issued under Subsection (a), the clerk of the court shall send a copy of the warrant to:

(1) the condemned person's attorney and the attorney representing the state; and

(2) if the person is not a citizen of the United States, the nearest consular official of the country of which the person is a citizen.

SECTION 3. (a) Article 43.141, Code of Criminal Procedure, as amended by this Act, applies only to an order entered on or after the effective date of this Act. An order entered before the effective date of this Act is governed by the law in effect on the date the order was entered, and the former law is continued in effect for that purpose.

(b) Article 43.15, Code of Criminal Procedure, as amended by this Act, applies only to a warrant issued on or after the effective date of this Act. A warrant issued before the effective date of this Act is governed by the law in effect on the date the warrant was issued, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2015.

county in which such judgment of conviction was had, to be ~~[by him]~~ delivered by the sheriff to the director ~~[said Director of the Department of Corrections]~~, together with the condemned person if the person [he] has not previously been so delivered.

(b) At the time the warrant is issued under Subsection (a), the clerk of the court shall send a copy of the warrant to:

(1) the attorney who represented the condemned person in the most recently concluded stage of a state or federal postconviction proceeding;

(2) the attorney representing the state; and

(3) the office of capital writs established under Subchapter B, Chapter 78, Government Code.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.