

**SUBJECT:** Prohibiting execution of a person ruled incompetent

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 8 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Smith, Talton, Wise  
0 nays  
1 absent — Green

**WITNESSES:** For — Steven Conder, Tarrant County Criminal District Attorney’s Office;  
Genevieve Hearon, Capacity for Justice  
Against — Dudley Sharp, III, Justice for All  
On — Roe Wilson, Harris County District Attorney’s Office

**DIGEST:** CSHB 245 would amend the Code of Criminal Procedure to prohibit the execution of a person found incompetent to be executed. A defendant would be considered incompetent if the defendant did not understand that he or she was to be executed, that the execution was imminent, and the reason he or she was to be executed.

If a prosecutor, a defense attorney, or the trial court raised the issue of whether a defendant was incompetent to be executed, the trial court would have to order at least two mental health experts to examine the defendant and determine whether he or she was competent. Mental health experts who examined a defendant would have to provide copies of their reports to the prosecutor, defense attorney, and court. The trial court would retain jurisdiction over motions by or for a defendant.

Defendants could not be executed if the court found them incompetent to be executed, based on the reports from the mental health experts. The trial court would have to order the defendant to be reexamined periodically to determine whether he or she was no longer incompetent to be executed. If the court found, based on the mental health experts’ reports, that a defendant was not incompetent to be executed, the trial court could set an execution date.

This bill would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

CSHB 245 would codify requirements laid out in a 1984 U.S. Supreme Court opinion, *Ford v. Wainwright*, 477 U.S. 399 (1986), that prohibits the execution of a prisoner who is insane. Even though courts throughout Texas now follow the Supreme Court's test for determining whether someone is competent to be executed, CSHB 245 would be an important policy statement that Texas would not execute persons who are not competent.

It is important to codify the Supreme Court opinion so that courts and attorneys could turn to easily accessible statutory guidelines and to ensure uniform treatment of defendants. Any danger that the statute could be overruled by changes in case law are outweighed by the benefits that would come from having the state's policy clearly laid out in the statutes.

A clear statutory process for determining whether defendants are competent to be executed could help reduce claims that persons have been denied an opportunity to present their claims. CSHB 245 also could help ensure that these claims were not mixed with other post-conviction appeals challenging the constitutionality of a conviction.

CSHB 245 would not lead to longer death-penalty appeals or a greater number of such appeals. The state already abides by the Supreme Court opinion that CSHB 245 would codify, so there would be no change in current practices. The state already has adequate provisions limiting defendants' death-penalty appeals. CSHB 245 would not lead to excessive motions by defense lawyers asking for competency reviews because they could be held in contempt of court if they abuse the statute.

**OPPONENTS  
SAY:**

CSHB 245 is unnecessary because the state already is bound by the Supreme Court opinion prohibiting execution of the insane. Codifying this opinion could lead to confusion later if Supreme Court case law changed these requirements or the procedures covering competency for execution. If that happened, courts and attorneys who turned to the Code of Criminal Procedure for guidance could be misled because they would not necessarily know if the statutes were up to date.

OTHER  
OPPONENTS  
SAY:

CSHB 245 would not go far enough in establishing procedures for determining competency. It would be better to have more detailed procedures.

The bill should include an “assistance prong” test requiring that the defendant be able to be understood and able to communicate information.

CSHB 245 should require that the mental health experts used to examine a defendant be independent, disinterested experts.

State law should require an exam for competency to be performed shortly before each scheduled execution as a final check to ensure that the state is not violating the Supreme Court’s decision.

NOTES:

The committee substitute made numerous changes to the original bill, including:

- ! moving the provisions from a chapter governing appeals of death-penalty cases to one governing insanity as a defense;
- ! eliminating the authorization for these challenges to be filed as part of a *habeas corpus* appeal that challenges the constitutionality of a conviction;
- ! eliminating presumptions of mental competency under certain circumstances; and
- ! adding the requirement that the defendant know that the execution was imminent.