

SUBJECT: Appeals of trial court decisions about competency to be executed

COMMITTEE: Criminal Jurisprudence — favorable without amendment

VOTE: 5 ayes — Peña, Riddle, Escobar, Mallory Caraway, Pierson

0 nays

4 absent — Vaught, Hodge, Moreno, Talton

WITNESSES: For — Andrea Keilen, Texas Defender Service; (*Registered, but did not testify*: Edwin Colfax, The Justice Project; David Gonzalez, Texas Criminal Defense Lawyers Association; Steve Hall, The StandDown Texas Project; Keith S. Hampton, Texas Criminal Defense Lawyers Association; Will Harrell, ACLU; Benny Hernandez, American Civil Liberties Union of Texas)

Against — None

On — Amy Mills, Tarrant County District Attorney's Office

BACKGROUND: Under Code of Criminal Procedure, art. 46.05, a person convicted of capital murder and sentenced to death who is incompetent to be executed may not be executed. Defendants file motions of incompetency with the trial court, which holds a hearing to determine whether a defendant has raised a substantial doubt of his or her competency to be executed. If the trial court does not determine that the defendant has made the necessary substantial showing of incompetency, the court must deny the defendant's motion.

If the trial court makes a finding by a preponderance of evidence that the defendant is incompetent to be executed, it is left to the Court of Criminal Appeals to determine whether any existing execution date should be withdrawn and a stay of execution issued. If the trial court does not make a finding by a preponderance of evidence that the defendant is incompetent, the court may set an execution date.

DIGEST: HB 1545 would allow appeals of trial court determinations about the competency of someone to be executed to be made by either party in the

case. After a trial court had determined whether a defendant had established incompetency to be executed, the court would, upon motion of a party, send documents to the Court of Criminal Appeals for review and a judgment of whether to adopt the trial court's findings or recommendations.

The Court of Criminal Appeals also would have to determine whether an existing execution date should be withdrawn and a stay of execution issued while it conducted its review or after its judgment.

The bill would authorize trial courts to set execution dates when they determined that a defendant had not made a substantial showing of incompetency and if a trial court made a finding that a defendant was not incompetent to be executed.

The bill would take effect on September 1, 2007, and apply only to a motion filed on or after that date.

**SUPPORTERS
SAY:**

HB 1545 would help equalize the appeals process for court findings on whether an inmate was competent to be executed. Current law has been interpreted by courts to mean that the prosecution can appeal a trial court's finding on incompetency, but a defendant cannot.

HB 1545 specifically would allow either party to appeal a trial court's finding on incompetency. The bill would make the appeals process more like those in actions on writs of habeas corpus by having the trial court make findings and having the Court of Criminal Appeals make the final decision on an appeal. This procedure would streamline the decision-making process for these appeals and result in quicker decisions than under a traditional appeals process. It would fully protect the rights of defendants and help ensure that appeals were not used to delay unduly the imposition of a sentence.

HB 1545 would not expand the current authority of trial courts to set execution dates. The bill would preserve this authority in light of possible execution stays from the Court of Criminal Appeals while they were considering a trial court's decision.

**OPPONENTS
SAY:**

It might be better for HB 1545 to institute a full appeals process rather than the slightly different one established by the bill. Given the nature of the proceedings and the importance of a decision about whether someone

is competent to be executed, it would be best to clearly protect all of the rights of defendants by using the traditional appeals process.

NOTES:

Rep. Peña plans to offer a floor amendment prohibiting an appeal of an competency order within 20 days of an execution date.

The companion bill, SB 498 by Duncan, has been referred to the Senate Criminal Justice Committee.