

SUBJECT: Process for notice of scheduling execution date, issuing execution warrant

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Canales, Leach, Shaheen, Simpson

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, April 20 — 30-0

WITNESSES: (*On House companion bill, HB 2110*)

For — Amanda Marzullo, Texas Defender Service; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Kristin Etter, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition)

Against — None

On — (*Registered, but did not testify*: Edward Marshall, Office of the Attorney General)

BACKGROUND: Code of Criminal Procedure, art. 43.141 establishes guidelines for scheduling and withdrawing execution dates for those convicted of a capital offense who have received the death penalty. Under art. 43.15, after a court enters an order setting an execution date, court clerks have 10 days to issue a warrant for the execution. The warrant is delivered to the sheriff of the county where the trial was held. The sheriff is required to deliver the warrant to the director of the Texas Department of Criminal Justice.

DIGEST: SB 1071 would prohibit convicting courts from setting execution dates unless the prosecutor in the case filed a written motion to set the date and unless at least 10 days before a court set an execution date, a copy of motion was served on:

- the attorney who represented the condemned inmate in the most recently concluded stage of a state or federal post-conviction proceeding; and
- the state office of capital writs.

At the time the warrant was issued, clerks would be required to send a copy of the warrant to the prosecutor, the office of capital writs, and attorney who represented the inmate in the most recently concluded stage of a state or federal post-conviction proceeding.

The bill would take effect September 1, 2015, and would apply only to orders entered on or after that date.

SUPPORTERS
SAY:

SB 1071 would ensure that the setting of execution dates was transparent and that all parties involved were aware of the proceedings. Given the seriousness of the state executing a person and the legal process related to an execution date, the state should implement formal procedures so that attorneys on both sides of the case were aware of the proceedings and of the setting of an execution date. Current law does not include an explicit procedure to make sure this occurs.

While some counties follow procedures similar to those in the bill, this is not the case everywhere. For example, attorneys for an inmate learned through a newspaper article that an execution date had been set two weeks earlier, leaving them 33 days before the execution. This lack of notice can create problems for a defendant because there are issues such as the competency to be executed and clemency that can depend on an execution date. A statewide policy is needed to ensure an established, fair process is used in all death penalty cases.

The bill would not create any new right to appeal or foster litigation. If parties were not notified as required, the process would begin upon notice. Requiring a defendant's most recent attorney and the office of capital writs to be notified about when a court will set an execution date and of the date itself would ensure all of an inmate's legal representatives were

notified.

OPPONENTS
SAY:

Instituting new steps in the process used to carry out death sentences could invite litigation over the technicalities for carrying out the steps. For example, it is unclear what remedy would be available to defendants if the steps in SB 1071 were not followed. Problems associated with setting execution dates have been limited and might not warrant a statewide policy.

OTHER
OPPONENTS
SAY:

It is unclear why notice of a prosecutor's motion to have an execution date set and notice of the date would be required to be served on both an inmate's attorney and the office of capital writs.

NOTES:

The House sponsor plans to offer a floor amendment that would eliminate the proposed language that would have required prosecutors to file a written motion before an execution date could be set and would have created notification requirements that would have followed the motion. The amendment would require courts to provide notice to an inmate's attorney and the office of capital writs of an execution date within two days of setting that date and would state that the exclusive remedy for failing to comply with the deadline would be the resetting of an execution date. The proposed amendment also would eliminate a current requirement that execution dates set subsequent to an initial date be at least 31 days after the date the court entered the order setting the execution date. This change would prohibit all execution dates from being set earlier than the 91st day after a court enters an order setting the date.

The House companion bill, HB 2110 by S. Thompson, was sent to the House Calendars Committee on April 29.