

## **BILL ANALYSIS**

Senate Research Center

H.B. 1545  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current Texas law, the procedures for courts to consider claims that death row inmates are incompetent for the purposes of execution are governed by Article 46.05 (Competency to be Executed), Code of Criminal Procedure. That article provides that an inmate making a "substantial showing" of incompetence is afforded a hearing before the district court and two experts are appointed to evaluate the inmate's mental status. After the hearing, the district court determines the inmate's competency for the purpose of execution.

Article 46.05, Code of Criminal Procedure, is currently interpreted to contain only a one-way appeal, allowing the prosecution to appeal a court finding that an inmate is incompetent to be executed, while not providing the same ability to appeal to the inmate.

H.B. 1545 equalizes the appellate rights for the prosecution and the defense and shifts the method of district court determinations to a process similar to that adopted in habeas corpus proceedings. This bill authorizes the court to authorize, at its discretion, a stay of execution.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 46.05, Code of Criminal Procedure, by amending Subsections (g), (k), and (l) and adding Subsections (l-1), (m), and (n), as follows:

(g) Requires the trial court to deny the motion if it does not determine that the defendant has made a substantial showing of incompetency, and authorizes the trial court to set an execution date as otherwise provided by law.

(k) Requires the trial court to determine whether the defendant has established, rather than if the trial court makes a finding, by a preponderance of the evidence that the defendant is incompetent to be executed, based on certain reports. Authorizes the court to set an execution date as otherwise provided by law if the court makes a finding that the defendant is not incompetent to be executed.

(l) Requires the clerk, following the trial court's determination under Subsection (k) and on motion of a party, to send immediately to the court of criminal appeals in accordance with Section 8(d) (relating to certain information required to be sent by the clerk of the court to the court of criminal appeals), Article 11.071, the appropriate documents for that court's review and entry of a judgment, rather than that court's determination, of whether to adopt the trial court's order, findings, or recommendations issued under Subsection (g) or (k). Requires the court of criminal appeals to also determine whether any existing execution date should be withdrawn and a stay of execution issued while that court is conducting its review or, if a stay is not issued during the review, after entry of its judgment.

(l-1) Prohibits the court of criminal appeals, notwithstanding Subsection (l), from reviewing any finding of the defendant's competency made by a trial court as a result of a

motion filed under this article if the motion is filed on or after 20 days before the defendant's scheduled execution date.

(m) Creates this subsection from existing text.

(n) Redesignated from existing Subdivision (l). Authorizes the court of criminal appeals to withdraw any stay of execution issued under Subsection (l) and authorizes the trial court to set an execution date as otherwise provided by law if the court enters a judgment that a defendant is not incompetent to be executed, rather than if the trial court does not making the finding as described by Subsection (k).

SECTION 2. Makes application of Article 46.05, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 3. Effective date: September 1, 2007.