

BILL ANALYSIS

H.B. 1545
By: Pena
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, if a trial court determines that a defendant has made a substantial showing of incompetency, the court is required to order at least two mental health experts to examine the defendant to determine whether the defendant is incompetent to be executed. A defendant is incompetent to be executed if the defendant does not understand that he or she is to be executed and that the execution is imminent, and the reason he or she is being executed. Furthermore, it 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.

House Bill 1545 equalizes the appellate rights for the prosecution and the defense and shifts the method of court determinations to a process similar to that adopted in habeas corpus proceedings. It does not create any mandatory stay for execution for inmates to appeal a court's finding of competence to be executed. Rather, it permits the court to authorize, at its discretion, a stay of execution.

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

House Bill 1545 amends the Code of Criminal Procedure to state that if the trial court does not determine that the defendant has made a substantial showing of incompetency, the court must deny the motion and is allowed to set an execution date as otherwise provided by law.

The bill also provides that the trial court is required to determine whether, on the basis of certain reports, the motion, any attached documents, any responsive pleadings, and any evidence introduced in the final competency hearing, the defendant has established by a preponderance of the evidence that the defendant is incompetent to be executed. If the court makes a finding that the defendant is not incompetent to be executed, the court is allowed to set an execution date as otherwise provided by law.

Furthermore, the bill provides that following the trial court's determination and on a party's motion, the clerk is required to send immediately to the court of criminal appeals in accordance with Section 8(d), Article 11.071, Code of Criminal Procedure, the appropriate documents for that court's review and entry of a judgment of whether to adopt the trial court's order, findings, or recommendations issued under Article 46.05(g) or (h), Code of Criminal Procedure. The court of criminal appeals also is required to 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.

H.B. 1545 states that if the court of criminal appeals enters a judgment that a defendant is not incompetent to be executed, the court is allowed to withdraw any stay of execution issued under Article 46.05(l), Code of Criminal Procedure, and the trial court is allowed to set an execution date as otherwise provided by law.

The change in law made by this Act applies only to a motion filed under Article 46.05, Code of Criminal Procedure, on or after the effective date of this Act. A motion filed under that article before the effective date of this Act is covered by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.