

1-1 By: Pena (Senate Sponsor - Duncan) H.B. No. 1545
1-2 (In the Senate - Received from the House May 4, 2007;
1-3 May 8, 2007, read first time and referred to Committee on Criminal
1-4 Justice; May 18, 2007, reported favorably by the following vote:
1-5 Yeas 5, Nays 0; May 18, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to competency to be executed in a capital case.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Article 46.05, Code of Criminal Procedure, is
1-11 amended by amending Subsections (g), (k), and (l) and adding
1-12 Subsections (l-1), (m), and (n) to read as follows:

1-13 (g) If the trial court does not determine that the defendant
1-14 has made a substantial showing of incompetency, the court shall
1-15 deny the motion and may set an execution date as otherwise provided
1-16 by law.

1-17 (k) The trial court shall determine whether [If], on the
1-18 basis of reports provided under Subsection (i), the motion, any
1-19 attached documents, any responsive pleadings, and any evidence
1-20 introduced in the final competency hearing, the defendant has
1-21 established [trial court makes a finding] by a preponderance of the
1-22 evidence that the defendant is incompetent to be executed. If the
1-23 court makes a finding that the defendant is not incompetent to be
1-24 executed, the court may set an execution date as otherwise provided
1-25 by law.

1-26 (l) Following the trial court's determination under
1-27 Subsection (k) and on motion of a party, the clerk shall send
1-28 immediately to the court of criminal appeals in accordance with
1-29 Section 8(d), Article 11.071, the appropriate documents for that
1-30 court's review and entry of a judgment [determination] of whether
1-31 to adopt the trial court's order, findings, or recommendations
1-32 issued under Subsection (g) or (k). The court of criminal appeals
1-33 also shall determine whether any existing execution date should be
1-34 withdrawn and a stay of execution issued while that court is
1-35 conducting its review or, if a stay is not issued during the review,
1-36 after entry of its judgment.

1-37 (l-1) Notwithstanding Subsection (l), the court of criminal
1-38 appeals may not review any finding of the defendant's competency
1-39 made by a trial court as a result of a motion filed under this
1-40 article if the motion is filed on or after the 20th day before the
1-41 defendant's scheduled execution date.

1-42 (m) If a stay of execution is issued by the court of criminal
1-43 appeals, the trial court periodically shall order that the
1-44 defendant be reexamined by mental health experts to determine
1-45 whether the defendant is no longer incompetent to be executed.

1-46 (n) [~~(l)~~] If the court of criminal appeals enters a judgment
1-47 that a defendant is not incompetent to be executed [trial court does
1-48 not make the finding as described by Subsection (k)], the court may
1-49 withdraw any stay of execution issued under Subsection (l), and the
1-50 trial court may set an execution date as otherwise provided by law.

1-51 SECTION 2. The change in law made by this Act applies only
1-52 to a motion filed under Article 46.05, Code of Criminal Procedure,
1-53 on or after the effective date of this Act. A motion filed under
1-54 that article before the effective date of this Act is covered by the
1-55 law in effect on the date the motion was filed, and the former law is
1-56 continued in effect for that purpose.

1-57 SECTION 3. This Act takes effect September 1, 2007.

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