BILL ANALYSIS

BACKGROUND AND PURPOSE

Currently, Article 43.15 (Warrant of Execution), Texas Code of Criminal Procedure, requires the district clerk, within 10 days of the signing of the execution order, to issue a death warrant and to deliver it to the sheriff of the convicting county. The sheriff is then supposed to serve the death warrant on the Texas Department of Criminal Justice (TDCJ) in Huntsville. The sheriff is also supposed to deliver the "condemned person," along with the death warrant to TDCJ, if "he has not previously been so delivered." Typically, the defendant has already been delivered to TDCJ long before the execution order is signed or delivered to TDCJ.

The statute does not require that notice be made on the defendant or on counsel of record that an execution date has been set. The Office of the Attorney General (OAG) is the party who handles any last minute litigation in these cases, but the statute does not require notice to OAG either. Article 43.141 (Scheduling of Execution Date; Withdrawal; Modification) permits the convicting court to set a second or subsequent execution date as little as 30 days after the execution order is signed. The potential problem is that if all of the involved parties do not receive timely notice of the execution date, they will be unable to adequately prepare for last-minute litigation.

S.B. 1173 amends current law relating to certain procedures for delivery of a warrant of execution and modifications or withdrawals of a warrant of execution.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Article 43.15, Code of Criminal Procedure, as follows:

> Art. 43.15. WARRANT OF EXECUTION. (a) Creates this subsection from existing text. Requires the clerk of the court in which the sentence is pronounced, whenever any person is sentenced to death, within ten days after the court enters its order setting the date for execution, to issue a warrant under the seal of the court for the execution of the sentence of death, which is required to recite the fact of conviction, setting forth specifically the offense, the judgment of the court, and the time fixed for the execution, and commanding the director of the correctional institutions division of the Texas Department of Criminal Justice (TDCJ) to proceed, at the time and place named in the order of execution, to carry the sentence into execution, as provided in Article 43.14 (Execution of Convict). Deletes existing text requiring the clerk to issue a warrant for a person sentenced to death that recites the time fixed for his execution, and directed to the Director of the Department of Corrections at Huntsville, Texas, commanding him to proceed, at the time and place named in the order of execution, to carry the same into execution, as provided by the preceding Article. Makes nonsubstantive changes.

> (b) Requires the clerk of the court to deliver the warrant of execution to the sheriff of the county in which the judgment of conviction was entered, who is required to deliver the warrant to the director of the correctional institutions division of TDCJ, together with the condemned person if the condemned person

has not previously received the warrant. Makes conforming and nonsubstantive changes.

(c) Requires the clerk of the court to send a copy of the warrant of execution by certified mail, return receipt requested, to the attorney of record for the condemned person, if any; the district attorney, criminal district attorney, or county attorney having felony jurisdiction for the county in which the judgment of conviction was entered; and the attorney general.

(d) Requires the clerk of the court, if the warrant of execution is modified or withdrawn, to send a copy of the order modifying or withdrawing the warrant of execution by certified mail, return receipt requested, to TDCJ for delivery to the condemned person, and the same parties to whom a copy of the warrant was sent under Subsection (c).

(e) Provides that the failure by a court to comply with Subsection (c) or (d) does not invalidate a warrant of execution issued under Subsection (a).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.